

Exhibit 1

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT

IN RE:

SCHWAB INDUSTRIES, INC., et al.

Case No. 10-60702

Videotape Deposition of
FRANK A. CATLETT

March 15, 2010

8:44 a.m.

Taken at:

Fairfield Inn & Suites
2060 Blowing Rock Road, Watauga Conference Room
Boone, North Carolina

Karen K. Kidwell, Notary Public

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Schwab Industries, Inc.:</p> <p>4 Brouse McDowell, by</p> <p>5 KERRI L. KELLER, ESQ.</p> <p>6 388 S. Main Street</p> <p>7 Suite 500</p> <p>8 Akron, OH 44311</p> <p>9 (330) 535-5711</p> <p>10 kkeller@brouse.com</p> <p>11</p> <p>12 On behalf of the Lenders:</p> <p>13 Thompson Hine, LLP, by</p> <p>14 STEPHEN D. WILLIGER, ESQ.</p> <p>15 3900 Key Center</p> <p>16 127 Public Square</p> <p>17 Cleveland, OH 44114</p> <p>18 (216) 516-5655</p> <p>19 stephen.williger@thompsonhine.com</p> <p>20</p> <p>21 Also Present: Bruce Weekly, Videographer</p> <p>22 * * * * *</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 VIDEOGRAPHER: On the record. The time is</p> <p>2 8:40 a.m. The date is March 15th, 2009. This is the</p> <p>3 deposition of Frank A. Catlett, RE: Schwab Industries,</p> <p>4 Incorporated, et al, in the United States Bankruptcy</p> <p>5 Court for the Northern District of Ohio, Case Number</p> <p>6 10-60702. This deposition is being held at Fairview</p> <p>7 Inn and Suites, 2060 Blowing Rock Road, Boone, North</p> <p>8 Carolina. Videographer is Bruce Weekly. Court</p> <p>9 reporter is Karen Kidwell. Would counsel please state</p> <p>10 their appearance for the record?</p> <p>11 MR. WILLIGER: Stephen Williger for the</p> <p>12 lenders.</p> <p>13 MS. KELLER: Kerri Keller for the creditor.</p> <p>14 VIDEOGRAPHER: Would the court reporter</p> <p>15 please swear in the witness?</p> <p>16 FRANK A. CATLETT</p> <p>17 being first duly sworn, testified as follows:</p> <p>18 EXAMINATION</p> <p>19 BY MR. WILLIGER:</p> <p>20 Q. Good morning, Mr. Catlett.</p> <p>21 A. Good morning.</p> <p>22 Q. As you know, my name is Steve Williger, and</p> <p>23 we have not met before yesterday nor had conversations,</p> <p>24 social interactions or anything like that; is that</p> <p>25 correct?</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 WITNESS/EXAMINATION</p> <p>3 FRANK A. CATLETT</p> <p>4 By Mr. Williger 4</p> <p>5 By Ms. Keller 79</p> <p>6 By Mr. Williger 166</p> <p>7 By Ms. Keller 170</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 No. Description Page</p> <p>11 Catlett 1 3/9/2010 Appraisal Review 5</p> <p>12 Memorandum of Schwab</p> <p>13 Materials, Inc. Property</p> <p>14 by Frank A. Catlett</p> <p>15 (Retained by Mr. Williger)</p> <p>16 Catlett 2 2/26/2010 report of Mr. 136</p> <p>17 John Gillott</p> <p>18 (Retained by Court Reporter)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 A. That's correct.</p> <p>2 (CATLETT NUMBER 1 WAS MARKED FOR IDENTIFICATION)</p> <p>3 BY MR. WILLIGER:</p> <p>4 Q. I'm going to hand you what is marked as</p> <p>5 Catlett Exhibit 1. Is that the expert report that you</p> <p>6 rendered in this case?</p> <p>7 A. Yes, sir, it is.</p> <p>8 Q. Okay. And I'll just refer you to your -- to</p> <p>9 the section on page 45. You can actually keep in front</p> <p>10 of you if you need it or you can refer to your own.</p> <p>11 A. All right.</p> <p>12 Q. On page 45, there's a section on your</p> <p>13 qualifications. Are those qualifications accurate?</p> <p>14 A. Yes, sir, they are.</p> <p>15 Q. Are they up to date?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Are there any qualifications that are not on</p> <p>18 there?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. And again, my understanding, there's</p> <p>21 no objection to his testifying as an expert? In this</p> <p>22 case?</p> <p>23 MS. KELLER: My understanding is no.</p> <p>24 MR. WILLIGER: No objection?</p> <p>25 MS. KELLER: No objection.</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 BY MR. WILLIGER:</p> <p>2 Q. Okay. Good. Mr. Catlett, I'm just going to</p> <p>3 ask you a few questions here and hopefully get through</p> <p>4 this relatively quickly. You were retained to perform</p> <p>5 some services. Could you briefly describe the services</p> <p>6 you were retained to perform?</p> <p>7 A. I was retained to make an appraisal review</p> <p>8 of a report prepared by Mr. Gillott and Doreen Gillott</p> <p>9 on this Schwab property which is 2100 acres on</p> <p>10 Corkscrew Road in Lee County, Florida.</p> <p>11 Q. And did you do that?</p> <p>12 A. Yes, I did.</p> <p>13 Q. And during the course --</p> <p>14 MS. KELLER: Can we go off the record for a</p> <p>15 second? I'm sorry. I don't mean to do this. I'm not</p> <p>16 -- I don't think there's objections to him being</p> <p>17 credentialed as he is, but I don't want to make the</p> <p>18 representation that we're waiving any particular</p> <p>19 challenges to experience in this type of area or on</p> <p>20 these type of mines.</p> <p>21 VIDEOGRAPHER: We are going off the record.</p> <p>22 MR. WILLIGER: Well, let's just do it on the</p> <p>23 record. Let's just go. I don't want to be here all</p> <p>24 day.</p> <p>25 MS. KELLER: Sorry.</p>	<p style="text-align: right;">Page 8</p> <p>1 MS. KELLER: Okay. I guess you do what you</p> <p>2 have to do, and I apologize. I mean I can call Nick</p> <p>3 and see if he's okay with that.</p> <p>4 MR. WILLIGER: Go ahead. That's up to you.</p> <p>5 MS. KELLER: Okay.</p> <p>6 (RECESS TAKEN FROM 8:44 A.M. TO 8:48 A.M.)</p> <p>7 VIDEOGRAPHER: Stand by. We are on the</p> <p>8 record. The time on the monitor is 8:48.</p> <p>9 BY MR. WILLIGER:</p> <p>10 Q. Mr. Catlett, we did discuss the fact that</p> <p>11 your CV is up to date, and there's nothing to add; is</p> <p>12 that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Let's go over a little bit of your</p> <p>15 qualifications, first of all.</p> <p>16 A. Okay.</p> <p>17 Q. Where do you reside?</p> <p>18 A. My office and practice is in Tampa, Florida.</p> <p>19 Q. Okay. And how long have you been in</p> <p>20 practice?</p> <p>21 A. I've been -- this is my 34th year, although</p> <p>22 my company was founded in 1950.</p> <p>23 Q. And what is the -- what is your practice?</p> <p>24 A. We're real estate appraisers and</p> <p>25 consultants. Also happen to be a real estate broker</p>
<p style="text-align: right;">Page 7</p> <p>1 VIDEOGRAPHER: Stand by.</p> <p>2 MS. KELLER: Because I don't know what prior</p> <p>3 agreements you had with Nick, but I might ask questions</p> <p>4 on that.</p> <p>5 MR. WILLIGER: You can ask whatever</p> <p>6 questions you want.</p> <p>7 MS. KELLER: I don't want to make</p> <p>8 representations at this point.</p> <p>9 MR. WILLIGER: Right. Let's go back on.</p> <p>10 VIDEOGRAPHER: Stand by.</p> <p>11 MR. WILLIGER: And if I have to, I'll just</p> <p>12 go through the whole thing.</p> <p>13 MS. KELLER: I mean I can call real fast and</p> <p>14 ask.</p> <p>15 MR. WILLIGER: If you want.</p> <p>16 MS. KELLER: Okay. Let me just do that.</p> <p>17 I'd feel more comfortable if we just take five minutes</p> <p>18 because I don't know what you've discussed with Nick,</p> <p>19 and I'm going to ask questions --</p> <p>20 MR. WILLIGER: I didn't discuss with Nick</p> <p>21 doing that. This is what happened in Conery. I never</p> <p>22 questioned them on any of that stuff. He did a</p> <p>23 ten-minute direct. I did my cross. And I'm not going</p> <p>24 to, you know, go for the disqualification as an expert</p> <p>25 for Conery's.</p>	<p style="text-align: right;">Page 9</p> <p>1 since 1975.</p> <p>2 Q. And during the course of your work as a real</p> <p>3 estate appraiser and broker, have you worked with</p> <p>4 mines?</p> <p>5 A. Yes, I have.</p> <p>6 Q. Limestone mines?</p> <p>7 A. Lime rock and phosphate mines.</p> <p>8 Q. Okay. And your expertise is as an MAI</p> <p>9 appraiser?</p> <p>10 A. Yes.</p> <p>11 Q. What does that mean, MAI appraiser?</p> <p>12 A. Member of the Appraisal Institute.</p> <p>13 Q. Are you a instructor?</p> <p>14 A. Yes, I am. I'm an instructor for the six</p> <p>15 classes for the institute. The sales comparison</p> <p>16 approach in income one and income two would be</p> <p>17 applicable to a property like this, yes.</p> <p>18 Q. And we talked about the fact that you had</p> <p>19 interest -- experience in mining properties, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And have you had experience in citrus</p> <p>22 properties as well?</p> <p>23 A. Yes, we do a lot of citrus groves. As a</p> <p>24 matter of fact, we're doing one this particular week,</p> <p>25 one of my associates.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. We talked a moment ago about the purpose for 2 your retention? 3 A. Yes. 4 Q. And that was to review the report of 5 Mr. Gillott and to come up with your own number as to 6 the value of the subject property in this case? 7 A. That's correct. And I'm also a review 8 appraiser for the Florida Department of Environmental 9 Protection. I've -- and an appraiser -- I've been 10 involved in the preservation of over a million acres in 11 Florida in the last 15 to 20 years. I've testified in 12 front of the governor and cabinet relative to some 13 purchases, for example, Babcock Ranch for \$350 million. 14 I'm also a reviewer for the Southwest and the South 15 Florida Water Management Districts, so that goes to my 16 experience as a reviewer. 17 Q. All right. And did you make a physical 18 inspection of the subject property in this case? 19 A. Yes, I did. On March 8th, on another -- 20 while I was on another assignment, I went to look at 21 this property. I only viewed it from Corkscrew Road 22 and from Six L's Road which is on the western boundary. 23 I did not go to the interior of the property. 24 Q. And the interior property is currently being 25 used as an orange grove and a potato farm?</p>	<p style="text-align: right;">Page 12</p> <p>1 Also, I found mathematical inconsistencies and 2 inconsistencies in description of the property in its 3 relationship to I-75, Alico Road, so forth. 4 Q. And Aleco is A-L-I-C-O; is that correct? 5 A. Yes. 6 Q. So, in general, would it be fair to say that 7 you disagreed with the -- that you disagree with the 8 conclusions reached by Mr. Gillott with respect to this 9 subject property? 10 A. Absolutely. 11 Q. Okay. Now, you have your report in front of 12 you, and I think you have Mr. Gillott's report in front 13 of you as well, which I'm not going to mark it as an 14 exhibit. And feel free to refer to either one if you 15 need to in answering any of the questions I'm going to 16 ask you. 17 A. That's fine. 18 Q. And as I read your report, it appeared to me 19 that what you did is you addressed the different 20 sections of the Gillott report? 21 A. That's correct. 22 Q. Okay. Now, you mentioned that there were 23 too many extraordinary assumptions and I think you said 24 hypothetical conditions? 25 A. Hypothetical -- yes, conditions.</p>
<p style="text-align: right;">Page 11</p> <p>1 A. That's correct, about a thousand and 73 2 acres of grove and 400 of potatoes. 3 Q. All right. And then you rendered opinions 4 that are contained in, among other places, in Exhibit 5 1? 6 A. That's correct. 7 Q. And were all of those opinions reached to a 8 reasonable degree of certainty? 9 A. Yes. 10 Q. Now, let's just start out, I guess in the 11 general, then we'll talk about some specifics. I think 12 your testimony was that you were asked to consider the 13 appraisal of this subject property made previously by 14 Mr. Gillott? 15 A. That is correct. 16 Q. Do you remember what the date of 17 Mr. Gillott's work was? 18 A. February 26th, 2010. 19 Q. All right. And just in general, if you 20 could describe for the court your conclusions about 21 your review of the Gillott report? 22 A. There were too many extraordinary 23 assumptions and limiting conditions as well as 24 hypothetical conditions to lead the peers or users of 25 similar reports to consider this a credible report.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. What's an extraordinary assumption? 2 Or -- and then how does it relate to the Gillott 3 report? 4 A. On page 9 of my report, for the readers that 5 are not familiar with extraordinary assumption and 6 hypothetical conditions, an extraordinary assumption 7 which if found to be false, could alter the appraiser's 8 opinions or conclusion. This relates to uncertain 9 information about the physical, legal, and economic 10 characteristics of the subject property or about 11 condition extended to the property such as market 12 trends and conditions. A hypothetical condition is 13 contrary to what exists but is supposed for the 14 analysis. 15 Q. And that would have been supposed by 16 Mr. Gillott for his analysis? 17 A. That is correct. 18 Q. Okay. What extraordinary conditions did you 19 find in Mr. Gillott's report that you disagreed with? 20 A. On page 5 of my review, the subject is 21 valued as a going concern and as an operating mine. 22 This is clearly not the case in the subject property. 23 Q. Okay. Let's make sure -- I don't mean to 24 stop you, but make sure that you make a distinction 25 between what Mr. Gillott is saying and then what you</p>

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<p>1 are saying.</p> <p>2 A. Okay.</p> <p>3 Q. In other words, if something came out of</p> <p>4 Mr. Gillott's report, just say, Mr. Gillott said, this</p> <p>5 is not correct or is correct for whatever reason.</p> <p>6 A. Okay. I think for the benefit of everyone,</p> <p>7 we need to go over going concern value. That's on page</p> <p>8 12.</p> <p>9 Q. Okay.</p> <p>10 A. Is an established and operating business</p> <p>11 with an indefinite life. This would include tangible</p> <p>12 and intangible assets and includes an incremental value</p> <p>13 associated with business concern which is distinct from</p> <p>14 the values of real property.</p> <p>15 Q. You know what. Let's go through his report</p> <p>16 and then your response to it.</p> <p>17 A. Okay.</p> <p>18 Q. And that way it will be probably a little</p> <p>19 bit easier.</p> <p>20 A. Back to --</p> <p>21 Q. And I believe we can start with your</p> <p>22 analysis on page 11.</p> <p>23 A. You didn't want me to continue the</p> <p>24 hypothetical or the extraordinary?</p> <p>25 Q. I'd like you to explain in general what the</p>	<p>1 with respect to the subject property, there is nothing</p> <p>2 entitled, in other words, no entitlement to mine, no</p> <p>3 entitlement to do necessarily anything?</p> <p>4 A. No entitlements, right. It is only relative</p> <p>5 to a portion of the property, 630 acres that has the</p> <p>6 correct zoning for mining.</p> <p>7 Q. Okay. And if a portion of the property has</p> <p>8 the correct zoning for mining, does that mean that</p> <p>9 mining can take place on that property?</p> <p>10 A. Subject to having permits.</p> <p>11 Q. Okay. So zoning itself is insufficient to</p> <p>12 permit an owner to conduct mining?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. They would need permits?</p> <p>15 A. Yes.</p> <p>16 Q. Would they need anything else?</p> <p>17 A. Those permits would come from the state,</p> <p>18 from the water management district, and from the</p> <p>19 county.</p> <p>20 Q. Okay. Now in the next bullet point on page</p> <p>21 11 from your opinion, you state that the highest and</p> <p>22 best use would be for some possible mining operation.</p> <p>23 I assume that's a statement that you're making from</p> <p>24 Mr. Gillott's report?</p> <p>25 A. No, that's actually a statement that I'm</p>
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<p>1 extraordinary and what the hypotheticals are, but we'll</p> <p>2 get into the specifics momentarily.</p> <p>3 A. That's fine.</p> <p>4 Q. So, okay. I guess the first part of</p> <p>5 Mr. Gillott's report that you address is on page 11 of</p> <p>6 your report. The letter of transmittal.</p> <p>7 A. Yes, sir.</p> <p>8 Q. And it's my understanding that Mr. Gillott</p> <p>9 referred to what he called "entitled reserves" in his</p> <p>10 report?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And did you look at whether entitled</p> <p>13 reserves exist on the subject property?</p> <p>14 A. It's confusing to me as to what "entitled</p> <p>15 reserves" actually mean. There is no permit on this</p> <p>16 property. It's not like you have an approved plat of a</p> <p>17 subdivision where the county or the city has granted</p> <p>18 you the permission to build it. There is no permit on</p> <p>19 this thing, and therefore, there -- really aren't</p> <p>20 entitled. I think that's a misnomer.</p> <p>21 Q. Is the term "entitled reserve" something</p> <p>22 that a typical MAI appraiser would use during the</p> <p>23 course of an appraisal?</p> <p>24 A. No, not to my knowledge.</p> <p>25 Q. And so I guess what your testimony is, is</p>	<p>1 making for myself --</p> <p>2 Q. Okay.</p> <p>3 A. -- in here. But that it is distant future</p> <p>4 but not today, based upon market conditions.</p> <p>5 Q. Okay. Now, you say "distant future." And</p> <p>6 what do you base that on?</p> <p>7 A. We can get into a lot of things such as the</p> <p>8 competitor supply where there's over 460 million tons</p> <p>9 available of aggregate within the other providers in</p> <p>10 this particular area which you would have to compete</p> <p>11 against, as one example. The downward pricing of the</p> <p>12 aggregate, which I've provided a chart in the addenda</p> <p>13 that shows how these prices have gone down. And I've</p> <p>14 also talked about it later in the report which we'll</p> <p>15 probably get to.</p> <p>16 Q. Okay. So the bottom line is if there is a</p> <p>17 highest and best use for this subject property that</p> <p>18 includes mining, it certainly does not exist today?</p> <p>19 A. That is correct.</p> <p>20 Q. Is it likely to exist in the near future?</p> <p>21 A. Not in my opinion, no.</p> <p>22 Q. Why not?</p> <p>23 A. Again, based upon, for example, when the</p> <p>24 height of the market demanded 11 and a half to 13</p> <p>25 million tons of product in this particular area, that</p>

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<p style="text-align: right;">Page 18</p> <p>1 demand is down to about 2.25 million right now, 2 significant decrease. And there's also planned 3 decreases in nonresidential expenditures this year as 4 well as public construction, so all those things are 5 pointing that the -- we've got a significantly 6 overbuilt market. 7 As a matter of fact, there's 187 months 8 supply of developed single family lots, over 15 years 9 of developed lots, so there will be no subdivision 10 development for quite some time. 11 Q. So does that translate into the need for 12 aggregate that potentially at some point could be mined 13 from this subject property? 14 MS. KELLER: Objection. 15 MR. WILLIGER: Basis? 16 MS. KELLER: He isn't -- you haven't 17 qualified him to render that sort of opinion as to 18 whether or not, you know, market values and that kind 19 of thing. He's not an economist. 20 MR. WILLIGER: Okay. Go ahead. 21 THE WITNESS: Again, it's based upon my 22 appraising actual mining operations in this particular 23 area. I think at the present time I'm working on the 24 PREI mine, formerly known as Westwind, which is about a 25 half a mile from the subject property.</p>	<p style="text-align: right;">Page 20</p> <p>1 that's already been washed and processed and ready 2 to -- each of the mines has a -- maybe 60- to 90-day 3 supply. 4 Q. Okay. And what are those mines that you're 5 familiar with doing with that supply? 6 A. They're selling it as the need arises. 7 Q. Okay. You mentioned that there's 170 -- 187 8 months, and I'm not exactly sure I understood what your 9 testimony was. You mentioned there was 187-month 10 supply? 11 A. Of developed single family lots out there. 12 Q. So -- 13 A. Therefore, there wouldn't be the need for 14 rode base, for concrete for the streets or asphalt 15 paving or fill, those kinds of things for subdivision 16 development. 17 Q. Would that translate into a lack of need for 18 additional mining of these materials? 19 A. That's correct. 20 Q. Okay. In your review of Mr. Gillott's 21 report, did he take into consideration prevailing 22 trends in the neighborhood? And again, I'm referring 23 to your report, the 4th bullet point on page 11? 24 A. He said in his opening letter of transmittal 25 that he did, but it was not apparent in the review of</p>
<p style="text-align: right;">Page 19</p> <p>1 BY MR. WILLIGER: 2 Q. Okay. Are you familiar with the need for 3 aggregate in Lee County and other parts of Florida? 4 A. Yes, I am. 5 Q. And how did you become familiar with that? 6 A. Having appraised a number of the mining 7 operations in Florida from north Florida near Lake City 8 down to Miami and the Homestead area to include Lee and 9 Collier County and Charlotte County as well. 10 Q. And did you find during appraisals of these 11 properties that aggregate that had already been mined 12 has not been used? 13 MS. KELLER: Objection. If I can just do a 14 running objection, if you don't care, to the extent 15 that it goes beyond his qualifications, then I can 16 stop. 17 MR. WILLIGER: I disagree it goes -- that it 18 goes beyond the extent of his qualifications, but go 19 ahead. 20 THE WITNESS: So you asked the question, is 21 there already existing mining aggregate? 22 BY MR. WILLIGER: 23 Q. Yes. 24 A. Yes. In a number of the mining operations, 25 there is already stockpiles or inventory of aggregate</p>	<p style="text-align: right;">Page 21</p> <p>1 the report. 2 Q. Why not? 3 A. He didn't specifically cite -- mention 4 things like I just mentioned here in my review. 5 Q. Would you -- do you know Mr. Gillott? 6 A. Yes, I do. 7 Q. Would you expect Mr. Gillott to be familiar 8 with the kinds of information that he left out of his 9 report? 10 A. Based upon his experience, yes. 11 Q. So I guess the bottom line is what -- you 12 are testifying that there is a vastly reduced need for 13 the type of material that would potentially at some 14 point, if ever, be mined from the subject property? 15 A. That is correct. 16 Q. Okay. Now, if we could take a look at the 17 last bullet on page 11. You state that the 18 appraisers -- that would be Mr. Gillott, correct? 19 A. Correct. 20 Q. Assume that the mining will be on 630 acres, 21 eventually cover 1450 acres through an older permit 22 application, although an older permit application only 23 addresses 630 acres to a depth of 20 feet, yet the 24 appraisers assume a depth of 70 feet and 190 million 25 tons of production. And you go on. The court can read</p>

6 (Pages 18 to 21)

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<p>1 that or you can be cross examined. But the bottom line</p> <p>2 is what's wrong with Mr. Gillott's statements that he</p> <p>3 made in this connection, if anything?</p> <p>4 A. Well, it goes to the extraordinary</p> <p>5 assumption, one, that you're going to be able to get it</p> <p>6 extended from 20 feet down to 70 feet. And then he</p> <p>7 makes another extraordinary assumption that it's going</p> <p>8 to be expanded from 630 acres to 1450 acres, and that</p> <p>9 you have renewed permits, and that when he gets later</p> <p>10 into his discounted cash flows, he assumes that his</p> <p>11 rates of production and his pricing and all are in his</p> <p>12 words "more or less correct."</p> <p>13 Q. Do you know what -- whether the owners of</p> <p>14 the subject property have actually filled out a mine</p> <p>15 application?</p> <p>16 A. I have not physically seen the application,</p> <p>17 no, I have not. But from reading Mr. Gillott's report,</p> <p>18 as well as the report from Mr. Bowen on the property,</p> <p>19 they, they talk about the permit itself and the fact</p> <p>20 that Schwab has filed a Bert Harris claim for the</p> <p>21 subject property.</p> <p>22 Q. What was the extent of the mining requested</p> <p>23 in the original application by Schwab?</p> <p>24 A. Down to a depth of 20 feet on the 630 acres.</p> <p>25 Q. So they've never to your knowledge even</p>	<p>1 the product that is contained on the -- or in some</p> <p>2 amount on the Corkscrew property that we're looking at?</p> <p>3 A. Yes, I have read an environmental report,</p> <p>4 that's correct.</p> <p>5 Q. And you've evaluated other mines that</p> <p>6 contain the same material?</p> <p>7 A. Within this area, yes.</p> <p>8 Q. Within the exact same area?</p> <p>9 A. On Corkscrew Road or on Bonita Grande Road</p> <p>10 which would be Bonita Grande Aggregates which is one</p> <p>11 mile from I-75 where the subject mile is 8 miles from</p> <p>12 I-75 and is one of the further out mines to include the</p> <p>13 PREI across the street. You have to, as a driver, come</p> <p>14 by Youngquist, formerly C-Mix, Vulcan, and some of the</p> <p>15 other mines.</p> <p>16 Q. So just let me understand the significance</p> <p>17 of that. Are you saying that the subject property, if</p> <p>18 it was going to mine at all, is farther away from the</p> <p>19 highway than the other mines in the area?</p> <p>20 A. From the interstate, correct. And from the</p> <p>21 haul route. You're not allowed to haul on Corkscrew</p> <p>22 Road past Alico Road. You have to turn on to Alico</p> <p>23 Road. And then effectively, you go by these other</p> <p>24 mines.</p> <p>25 Q. So would that mean that if the subject</p>
Page 23	Page 25
<p>1 completed an application that would request the right</p> <p>2 to mine anything more than that?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. Now, are you familiar with the length</p> <p>5 of time it takes to mine an acre in this region?</p> <p>6 A. It would be dependent on the type of product</p> <p>7 that is there.</p> <p>8 Q. Okay. And the type of product on this</p> <p>9 property is what?</p> <p>10 A. Yes. It's a mixture of all kinds of</p> <p>11 aggregate and sand and so forth used for different</p> <p>12 materials. But it would also depend on the demand from</p> <p>13 the market for a particular product. And in this case,</p> <p>14 we've got a significantly reduced demand for the</p> <p>15 product, so it would take a longer period of time.</p> <p>16 Now in Mr. Gillott's report, in his</p> <p>17 discounted cash flow, he says that they would mine</p> <p>18 approximately 500 tons of product a year when, in fact,</p> <p>19 the PREI Corkscrew mine nearly across the road has been</p> <p>20 unable to do 300 tons over the last years, and they</p> <p>21 don't project to do more than about 250 over this year</p> <p>22 and the next year. So therefore, he's overestimated</p> <p>23 the amount of product. Also, we can get into pricing,</p> <p>24 but I'll get into that later.</p> <p>25 Q. Okay. So you're familiar with the mining of</p>	<p>1 property was actually conducting any mining activities,</p> <p>2 it would cost more to transport the -- whatever product</p> <p>3 they were able to mine?</p> <p>4 A. Yes. Per ton mile, the cost would increase,</p> <p>5 yes.</p> <p>6 Q. Do you know how long it would take for the</p> <p>7 Schwabs, if they had a permit, to mine let's say 42</p> <p>8 acres of this property?</p> <p>9 A. According to Mr. Gillott, it would be 10</p> <p>10 years. I think it was 47 actually.</p> <p>11 Q. Oh, 47 --</p> <p>12 A. Yes.</p> <p>13 Q. -- acres. So if they actually received a</p> <p>14 permit which we -- is not certain, is it?</p> <p>15 A. Oh, that's definitely not certain.</p> <p>16 Q. And they were able to receive a permit that</p> <p>17 permitted them to mine beyond 20 feet, is that -- which</p> <p>18 isn't certain, is it?</p> <p>19 A. No, sir.</p> <p>20 Q. How long would it take the Schwabs to mine</p> <p>21 that -- a 47-acres, if they were just going at it?</p> <p>22 A. Well, like you said, in Mr. Gillott's, it</p> <p>23 would be 10 years, but based upon 300,000, it would</p> <p>24 probably be longer than 10 years.</p> <p>25 Q. So if somehow they were able to mine the</p>

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<p style="text-align: right;">Page 26</p> <p>1 full 1 -- the 630 acres which they've requested beyond 2 the 20 feet that they requested, how long would it take 3 to mine that, that parcel, that 630 acre parcel? 4 A. About 130 years. 5 Q. I believe in that same paragraph on page 11 6 which is the last one, you address Mr. Gillott's claim 7 that he used some nationally recognized formula to 8 establish the amount of the reserves? 9 A. That is correct. 10 Q. Did you take a look at his claim and then 11 make an opinion -- render an opinion on that? 12 A. You mean look at his calculation? 13 Q. Yes. 14 A. Yes, I did. 15 Q. Yes. Were his calculations accurate? 16 A. No, they were not. 17 Q. In what way? 18 A. Actually, he underestimated the amount of 19 tons. If you were to use his -- if you used 1450 acres 20 times 43,560 square feet in an acre, okay, times a 21 depth of 70 feet, you would get the number of square 22 feet of material. And to get a cubic yard, you would 23 divide by 27, and then there's a factor to be used 24 converting cubic yards to tons, and that's 1.3. Using 25 that formula, it would have been about 212, 213 million</p>	<p style="text-align: right;">Page 28</p> <p>1 appraisals on Bonita Grande? 2 A. Yes. 3 MR. WILLIGER: I'm going to ask that this 4 deposition be marked confidential for use only in 5 context with this lawsuit so that proprietary 6 information about other properties that Mr. Catlett has 7 access to is not provided outside the confines of this 8 lawsuit. Is that a problem with you? 9 MS. KELLER: No. 10 MR. WILLIGER: That's okay? 11 MS. KELLER: No, I'm not -- I'm not waiving 12 any objections to the subject matter, but the 13 confidentiality is fine. 14 MR. WILLIGER: We have the confidentiality 15 agreement that anything that comes out of this 16 deposition will be used solely for purposes of this 17 lawsuit and not given to anybody else? 18 MS. KELLER: Yes. 19 MR. WILLIGER: Okay. Thank you. 20 BY MR. WILLIGER: 21 Q. Would you consider Mr. Gillott's conclusions 22 in his report in connection with what amount could be 23 mined over what period of time to be accurate? 24 A. Would you please repeat the question? 25 (RECORD READ.)</p>
<p style="text-align: right;">Page 27</p> <p>1 tons. So his mathematics doesn't match what he said. 2 Q. Okay. Now, if these extraordinary 3 conditions occurred and there was a permit that was 4 granted to mine the subject property for the full 1450 5 acres and assuming that Mr. Gillott was correct, that 6 there was 190 million tons there, how long would it 7 take to mine that? 8 MS. KELLER: Objection. 9 THE WITNESS: Approximate over 300 years. 10 BY MR. WILLIGER: 11 Q. Now, and your -- are you able to make these 12 calculations because you've done them before in working 13 with other mines? 14 A. Yes. And knowing what the reserves are at 15 these other mines. For example, in the engineering 16 report -- I forgot the name of it. 17 Q. The one that, that you believe Mr. Gillott 18 referred to in his report? 19 A. Yes. He did not mention it specifically. I 20 am to assume that that is the report. They said that 21 you could have approximately 2,000 tons per acre when 22 in fact, the mine across the street is at about 1850 23 tons per acre. And Bonita Grande, which has a depth of 24 90 feet, is less than a thousand tons per acre. 25 Q. And do you know that because you performed</p>	<p style="text-align: right;">Page 29</p> <p>1 THE WITNESS: No, I would not. 2 BY MR. WILLIGER: 3 Q. Would you consider them to be mere 4 speculation? 5 A. I would have to say it's based upon his 6 opinion. 7 Q. His opinion -- is his opinion based on 8 speculative issues? 9 A. It's not based upon actual estimates of 10 reserves by either a geologist or a civil engineer. 11 Q. Okay. Is Mr. Gillott -- you said you knew 12 Mr. Gillott? 13 A. That's correct. 14 Q. Is he qualified to opine as to the amount of 15 potential product as reserves on this subject property? 16 A. He can opine to a number himself, but it 17 must be based upon some, like I said, geologist report 18 or a report by a civil engineer, such as Dennis Rosa, 19 in Lee County who has been in the mining business his 20 whole life there, is a civil engineer and worked in all 21 these mines, and everybody knows him. That would be a 22 respectable estimate. 23 Q. Did Mr. Gillott base his opinions on any 24 respectable estimate? 25 A. He did it based upon a formula that's a</p>

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<p>1 generally accepted formula. I don't know where the</p> <p>2 generally accepted formula comes from, but it's a mere</p> <p>3 calculation of acreage times depth to get the amount of</p> <p>4 material. That doesn't mean that all that material is</p> <p>5 mineable material.</p> <p>6 Q. Let's move on to page 12 of your report. I</p> <p>7 believe that Mr. Gillott in his report or in the</p> <p>8 engineering report that we believe Mr. Gillott referred</p> <p>9 to. Of course, he doesn't mention a specific report,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Stated that there were four bore holes in</p> <p>13 undisclosed locations on the subject property. Did you</p> <p>14 read that?</p> <p>15 A. What I believe I read was that there were</p> <p>16 four test borings on the -- near the four corners of</p> <p>17 the property.</p> <p>18 Q. In your experience with appraising mining</p> <p>19 reports, are four undisclosed location bore holes</p> <p>20 adequate to provide either the engineer or Mr. Gillott</p> <p>21 with sufficient information to make an opinion as to</p> <p>22 what reserves would be where on the subject property?</p> <p>23 A. I feel that it would be insufficient. As a</p> <p>24 matter of fact, on the Billy Don Grant property, within</p> <p>25 the crew -- that's C-R-E-W -- that's being restored by</p>	<p>1 A. Correct.</p> <p>2 Q. Now, Mr. Gillott said that permits would be</p> <p>3 renewed to a depth of 70 feet?</p> <p>4 A. Yes.</p> <p>5 Q. To your knowledge, was there ever a permit</p> <p>6 to 70 feet in the first place?</p> <p>7 A. Not to my knowledge, no.</p> <p>8 Q. And so no permit would be renewed. It would</p> <p>9 have to be a new permit application --</p> <p>10 A. Yes.</p> <p>11 Q. -- altogether, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And we've talked about the fact that it</p> <p>14 would be unlikely that a permit application would be</p> <p>15 accepted?</p> <p>16 A. Correct.</p> <p>17 Q. And do you know, Mr. Catlett, whether an</p> <p>18 initial permit application on 630 acres to just 20 feet</p> <p>19 was accepted or denied?</p> <p>20 A. It was denied in 2002.</p> <p>21 Q. Okay. And then you mentioned earlier on in</p> <p>22 that paragraph based on -- that Mr. Gillott based</p> <p>23 conclusions on hypothetical conditions that the subject</p> <p>24 is a going concern?</p> <p>25 A. Yes.</p>
Page 31	Page 33
<p>1 the South Florida Water Management District, there was</p> <p>2 a tract of approximately 300 acres that had probably 16</p> <p>3 test borings on that particular site. The reason for</p> <p>4 the more test borings is that the types of material are</p> <p>5 not consistent in a regular strata all the same across</p> <p>6 the property. It could be different in different</p> <p>7 locations.</p> <p>8 Q. So just because one bore hole on a property,</p> <p>9 let's say that's 2100 acres, contains some kind of</p> <p>10 product doesn't mean that that same product is</p> <p>11 contained all over the 2100 acres?</p> <p>12 A. That's correct.</p> <p>13 Q. Or 1450 acres?</p> <p>14 A. That's correct.</p> <p>15 Q. Or 630 acres?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. On page 12, you mention in the first</p> <p>18 bullet point at the top that the appraisers -- that</p> <p>19 would be Mr. Gillott, right?</p> <p>20 A. Yes.</p> <p>21 Q. Based a conclusion of the value upon</p> <p>22 hypothetical conditions that the subject is a going</p> <p>23 concern and that the reserves are entitled and permits</p> <p>24 will be renewed to a depth of 70 feet to allow mining</p> <p>25 reserves in place. You said that?</p>	<p>1 Q. What does that mean?</p> <p>2 A. I started to give the definition of that</p> <p>3 earlier. I don't want to go to the first part. But in</p> <p>4 finishing up that same definition, it says, "The value</p> <p>5 of a going concerns include the intangible enhancement</p> <p>6 of the value of an operating enterprise which is</p> <p>7 produced by the assemblage of land, building, labor,</p> <p>8 equipment, and in this case, subsurface rights and</p> <p>9 reserves, and marketing operations. It would include a</p> <p>10 client base, contracts, competent management,</p> <p>11 supervision, knowledge of operations, and the adequacy</p> <p>12 of working capital. In essence, to assume that the</p> <p>13 property is a going concern encompasses a lot more than</p> <p>14 the existing property."</p> <p>15 Q. Is there a going concern -- a mining going</p> <p>16 concern on the subject property?</p> <p>17 A. No, there is not.</p> <p>18 Q. Has there ever been a mining going concern</p> <p>19 on the subject property to your knowledge?</p> <p>20 A. No, there has not.</p> <p>21 Q. In your opinion, based on your knowledge,</p> <p>22 education, and experience, is it likely that there ever</p> <p>23 will be a going concern on the subject property in</p> <p>24 terms of mining?</p> <p>25 A. In the possible way, way distant future.</p>

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<p>1 Q. And what do you mean by "way, way distant 2 future"?</p> <p>3 A. At least not for the next 10 years.</p> <p>4 Q. Okay. Moving down, you begin to address 5 Mr. Gillott's executive summary. And under Purpose 6 you say "entitled reserves." And I think you 7 testified -- I don't think we have to revisit it -- but 8 your testimony was that there is nothing entitled 9 regarding any reserves on the subject property?</p> <p>10 A. Correct.</p> <p>11 Q. We also talked, I think, about the next 12 paragraph, that Mr. Gillott's mathematical calculations 13 were not correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Anything more for you to add on that?</p> <p>16 A. No, that -- just that he assumed there was 17 190 million tons, and you'd be able to mine 1450 acres 18 of this 2100 acres.</p> <p>19 Q. And is that accurate?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. First of all, we get back to the permit only 23 allowed us 20 feet. Permit application only allowed to 24 20 feet and on 630 acres. There's no guarantee that 25 you can go to 70 feet nor that you could expand from</p>	<p>1 trees. You may have some muck in there, especially if 2 it's in wetland areas, and you may not be able to mine 3 in those wetland areas and have to do mitigation.</p> <p>4 Q. So at best, if they were ever granted a 5 permit to 20 feet, the -- some portion up to maybe 50 6 percent of that 20 feet would be useless in terms of 7 aggregate mining?</p> <p>8 A. I wouldn't say 50. I'd say 20 to 25 9 percent.</p> <p>10 Q. Okay. In the next paragraph, the last 11 paragraph on page 12, you mention that the 12 appraisers -- again, I assume you're referring to 13 Mr. Gillott?</p> <p>14 A. That's correct.</p> <p>15 Q. Are basically silent as to what DR/GR, 16 density reduction/groundwater resource means?</p> <p>17 A. Yes.</p> <p>18 Q. And first of all, could you tell us what it 19 means?</p> <p>20 A. This is about 83,400 acres in Lee County 21 that is east of I-75. Basically, this allows only a 22 density of one unit per 10 acres. It's an 23 environmentally sensitive area. They're worried about 24 the aquifer and about breaching that aquifer in this 25 area. It's also -- it's a panther habitat that runs</p>
Page 35	Page 37
<p>1 630 to 1450 acres.</p> <p>2 Q. Can you assume that all of the tons that 3 Mr. Gillott identified would all be mineable?</p> <p>4 A. In reviewing the engineering report, I 5 noticed that there was mining material that was FDOT, 6 road base material qualified using several testing 7 methods, which I understand. And that the depth down 8 to, I believe it was 30 feet, was mineable material. 9 There was a strata between 30 and 40 feet that wouldn't 10 have made the qualifications for the DOT. And then 11 there was another layer after that down to, I believe 12 50 feet. And then after 60 feet was non-minable. I 13 should say non-DOT qualified material. But that 14 doesn't mean that they couldn't use it for some kind of 15 other aggregate, fill, sand or whatever.</p> <p>16 Q. Even with respect to the 20 feet that was in 17 the denied application, would there be some portion of 18 that first 20 feet that would be overburden?</p> <p>19 A. Oh, yes, it would probably be four to seven 20 feet of overburden.</p> <p>21 Q. And what is overburden?</p> <p>22 A. That's the top layer of material that has 23 the grasses, and in this case, you'd have the groves 24 from the trees and the remaining portion of the potato 25 farm and so forth, and you would have to clear all the</p>	<p>1 through this particular area, and the panther is an 2 endangered species in Florida, so they're worried about 3 those. And degradation of the environment is what has 4 happened due to some of the mining operations, and the 5 county and the residents and so forth are worried about 6 it.</p> <p>7 Q. All right. Now, what's the significance to 8 the possibility that this subject property would ever 9 successfully obtain a permit to mine?</p> <p>10 A. I don't understand the question.</p> <p>11 Q. Maybe it was a bad question. What happens 12 if you breach an aquifer?</p> <p>13 A. Then all the contaminants --</p> <p>14 MS. KELLER: Objection.</p> <p>15 THE WITNESS: -- the chemicals, the 16 fertilizers, all that kind of thing can get into the 17 aquifer. The aquifer provides the drinking water for 18 this particular portion of Lee County and southwest 19 Florida, so you would be contaminating the source of 20 water.</p> <p>21 BY MR. WILLIGER:</p> <p>22 Q. So if a permit was granted, and we know that 23 there are agricultural operations, citrus grove and 24 potato farms, the concern would be that all the 25 chemicals used to successfully grow either potatoes or</p>

10 (Pages 34 to 37)

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<p>1 oranges would actually go into the drinking water of 2 the county?</p> <p>3 MS. KELLER: Objection.</p> <p>4 BY MR. WILLIGER:</p> <p>5 Q. Is that what you're saying?</p> <p>6 A. Yes. I've seen other issues where they've 7 dug these holes, and people throw all kinds of trash 8 into it. That also can get into the aquifer.</p> <p>9 Q. Okay. And then -- so I guess what I'm 10 trying to figure out is Mr. Gillott ignored in his 11 report any of these environmental issues?</p> <p>12 A. He didn't consider them, that's correct.</p> <p>13 Q. Okay. In -- if there was a permit 14 application that was made to mine, to increase the 15 amount of mining area, would that be taken into 16 consideration by the local government authorities?</p> <p>17 A. Yes.</p> <p>18 Q. All of these environmental considerations?</p> <p>19 A. Absolutely.</p> <p>20 Q. Including a panther habitat?</p> <p>21 A. Yes. I don't know that the specific path of 22 the panther habitat goes through this property. I'd 23 have to look that up, but this general area east of 24 Alico Road. Matter of fact, right before you get to 25 the subject property, there are 10-foot fences for</p>	<p>1 A. Goes to the credibility of the report.</p> <p>2 Q. Okay. Now, on the bottom of page 13, you 3 have a paragraph, says -- in which you say, "Citrus 4 grove sales adjusted for a downward trending market." 5 Could you talk about -- now you've appraised numerous 6 citrus groves, right?</p> <p>7 A. Correct.</p> <p>8 Q. And you're familiar with the market for 9 oranges that are grown in this area of Lee County, 10 correct?</p> <p>11 A. Yeah. And on this particular property, 12 Hamlins and Valencias, yes.</p> <p>13 Q. Okay. What did you mean by a downward 14 trending market?</p> <p>15 MS. KELLER: Objection.</p> <p>16 THE WITNESS: If you have -- and in this 17 case, there are sales where prices have been -- or 18 current prices are significantly reduced from 19 historical highs.</p> <p>20 For example, I just did a study for the 21 South Florida Water Management District on these crew 22 properties that I was appraising the day of this 23 particular assignment that I stopped by to look at the 24 property. And that results is basically there's been a 25 32 to 52 percent reduction in sale prices over this</p>
Page 39	Page 41
<p>1 maybe a mile or a mile and a half? And there's an 2 underground culvert cavern where the wildlife can get 3 through on the interstate because there have been a 4 number of panthers killed crossing the highway.</p> <p>5 Q. And that's a problem because the panther 6 under what, Florida law, is an endangered species?</p> <p>7 A. I believe it's a national law.</p> <p>8 Q. National law. Okay. Let's move to page 13 9 of your report where you are apparently addressing the 10 preliminary overview of Mr. Gillott's report?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And you have a paragraph at the top in which 13 you comment on Mr. Gillott's mileage calculations in 14 his report. Could you talk about that for a moment?</p> <p>15 A. Yes. He talked about the property being six 16 miles from the interstate. When I put it on my 17 odometer, it was eight miles. He talks about Aleco 18 Road being only a mile from the subject property when 19 it's actually 2.7 miles. He talkies about the 20 Youngquist mine being about a mile and a half -- or 21 excuse me -- a mile, and it's approximately three miles 22 away from the subject property, so it's just to the 23 reporting of the factual information that's incorrect.</p> <p>24 Q. And what's the significance of Mr. Gillott's 25 incorrect reporting?</p>	<p>1 period of time from 2005 to 2009.</p> <p>2 Interestingly, on my drive up here to Boone, 3 North Carolina, I was reading Florida Trend. And in 4 neighboring Collier County, the Toll Brothers just sold 5 2,000 acres for \$30 million that they paid \$108 million 6 dollars for in 2005. So this just goes to show you the 7 depth of the decline in this particular market.</p> <p>8 Q. Okay. Moving on to page 14, unless there's 9 something more that you'd like to --</p> <p>10 A. Well, I think in the addenda of this report, 11 I reference a study done by -- it's called the Emerging 12 Market Trends put out by the University of Florida 13 Bergstrom Center. It's actually authored by a 14 professor that I was a grad assistant to at the 15 University of Florida back in the '70s, and they 16 surveyed the whole State of Florida and specifically 17 highlighted in the back are discussions of where the 18 market is, the environment for investing in land, the 19 availability of capital to buy land and so forth, which 20 further supports my opinion.</p> <p>21 Q. And that begins on page 33 of your report, I 22 think?</p> <p>23 A. That is correct.</p> <p>24 Q. Okay. Moving on to page 14 of your report. 25 At the top paragraph, the full paragraph that starts,</p>

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<p>1 "The larger tract sales of which there are few have 2 adjusted sale prices in the range of \$8,815 to \$12,980 3 per acre with 3 known to have similar AG/2A zonings 4 either AR or DR/GR land uses subject -- similar to the 5 subject -- 6 A. That is true. 7 Q. -- supporting a grid. Could you explain 8 that so that a poor country lawyer like me can 9 understand it? Although I'd like to be a country 10 lawyer. I guess I come from Cleveland. 11 MS. KELLER: I was just thinking, I don't 12 think you're a country lawyer. 13 THE WITNESS: Basically in the addenda of 14 this report, I've provided several grids of sales, and 15 I have the write-ups, the lengthy write-ups of all of 16 these sales. One of these grids is entitled Mining 17 Land Sales of which I've included four that were not 18 included by Mr. Gillott. 19 As a preface to that, market conditions are 20 similar to what existed in 1998 to approximately 2002 21 or 2003 at this particular point in time when there was 22 sustainable growth before the market all got heated up, 23 and therefore, these sales would be applicable to 24 valuing properties today. And basically, those mining 25 sales were 80 -- roughly 9,000 to 21,000. Predominant</p>	<p>1 acre in comparison to these? 2 A. A hundred thousand an acre. 3 Q. So there's a significant difference between 4 the reality of what these properties have gone for and 5 what Mr. Gillott is opining the subject property -- 6 A. Yes. 7 Q. -- should go for? 8 A. Yes. And these were, for example, 9 properties that had known reserves and/or permits on 10 them but were not going concerns. 11 Q. Okay. So these properties were actually 12 further along than the subject property because they 13 actually had permits to mine? 14 A. I'd have to go back and look which ones they 15 were specifically, but it may have been one or two of 16 the four, yes. 17 Q. Okay. 18 A. Then there's additional sales grid where 19 I've talked about the larger acreage sales. And they 20 were from a low of 8300 to roughly 13,000 an acre. And 21 I've -- in both of these cases, I've gone back and 22 looked at the elements of comparison; location, access, 23 size, the availability of electric utilities, 24 topography and zoning. And I've compared those to the 25 Schwab property, even though I did not make a formal</p>
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<p>1 range is probably more 15 to 15 -- 14 to 15,000 an 2 acre. 3 BY MR. WILLIGER: 4 Q. And before you move on, this is the grid 5 that is titled Land Sales Summary and Compatibility 6 Grid, Schwab Property, Mining Land Sales, Lee County, 7 Florida? 8 A. That is correct. 9 Q. And at the top you are looking at four 10 properties that you identify M1, M2, M3, and M4? 11 A. Yes. 12 Q. And the M stands for mining? 13 A. Yes. 14 Q. So these are all properties within the 15 same -- actually very close to the subject property? 16 A. Actually, sales M2, M3, and M4 are either on 17 Alico Road or Corkscrew Road in the same mining area as 18 the subject property. 19 Q. Okay. Now you mentioned that these 20 properties went for -- between 9,000 and roughly in the 21 15,000 in general? 22 A. Up to 21,000. 23 Q. Up to 21,000? 24 A. Right. 25 Q. And what was Mr. Gillott's calculation per</p>	<p>1 appraisal of the property, but I did do, so that a 2 reader could pick up on this. But in any event, those 3 supported it. Then -- 4 Q. Let me just -- before you go on. Let me 5 just focus on one sale that I'm looking at on that 6 second grid that says Land Sales Summary and 7 Comparability Grid (Schwab Property), Lee County, 8 Florida, sale number 3, the Carter Road Citrus? 9 A. Yes, actually sales 3 and 4. 10 Q. Sales 3 and 4. Okay. And these actually 11 bound the subject Schwab property? 12 A. They're right to the south of the subject 13 property, that is correct. 14 Q. And they have the same zoning as the Schwab 15 property? 16 A. Correct. And the same land use. 17 Q. And the same potential reserve potential -- 18 possibilities? 19 A. Potential. Possible potential. 20 Q. Okay. And these are valued per acre at 8303 21 and 10,468 respectively? 22 A. Yes. 23 Q. As opposed to Mr. Gillott's hundred thousand 24 dollars per acre? 25 A. Yes, yes.</p>

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<p>1 Q. Okay.</p> <p>2 A. And then finally, there's a third sale grid</p> <p>3 with 10 sales on them, and this is only thrown in</p> <p>4 because I'm working on these 12 properties to the south</p> <p>5 that are basically 5 to 20 acres in size. And if you</p> <p>6 remember, I said that the density on this would be one</p> <p>7 unit per 10 acres, and you can see that these sale</p> <p>8 prices are between roughly 9,000 and 17,000, mostly in</p> <p>9 the rank of \$11,000 per acre.</p> <p>10 These may or may not have any reserves, but</p> <p>11 the fact is, they're too small to be mineable. But the</p> <p>12 interesting fact is that these are much smaller sales,</p> <p>13 and you would think that they would have a higher price</p> <p>14 per acre than a tract of 2100 acres.</p> <p>15 Q. But in any event, none of these are anywhere</p> <p>16 near Mr. Gillott's supposed estimate of over a hundred</p> <p>17 thousand dollars?</p> <p>18 A. As a going concern, that's correct.</p> <p>19 Q. All right. Let's return to page 14, since</p> <p>20 we're talking about value. And in your third</p> <p>21 paragraph, you state, "The value estimate of</p> <p>22 \$33,600,000 or \$16,000 per gross acre as estimated by</p> <p>23 the appraisers, which is Mr. Gillott, is within the</p> <p>24 range of reasonableness?</p> <p>25 MS. KELLER: Can you tell me where you are</p>	<p>1 have and have discussed briefly in here that have known</p> <p>2 reserves and were purchased for future mining potential</p> <p>3 with the highest of those being 17,000 an acre roughly.</p> <p>4 Q. Now when you came to your number, was this a</p> <p>5 fair market number?</p> <p>6 A. That would be correct.</p> <p>7 Q. Now, if you were going to look at this same</p> <p>8 property for purposes of ordering liquidation, what</p> <p>9 would your number about be?</p> <p>10 A. A number of the liquidators that we work</p> <p>11 with, some of them ask for 90 days. Some of them ask</p> <p>12 for 180 days.</p> <p>13 Q. Let's assume for orderly liquidation, we're</p> <p>14 talking 180 days?</p> <p>15 A. A hundred eighty days, I would say about</p> <p>16 seventy-five percent of market value.</p> <p>17 Q. Okay. And then what about for liquidation</p> <p>18 value 90 days?</p> <p>19 A. Probably 60 percent of market value, and</p> <p>20 these are based upon liquidation sales that I have</p> <p>21 knowledge of.</p> <p>22 Q. Okay. In the very next paragraph -- and by</p> <p>23 the way, what is your estimate as to why you're in the</p> <p>24 \$33 million range for this subject property, and</p> <p>25 Mr. Gillott is in excess of \$200 million for the same</p>
Page 47	Page 49
<p>1 again? I'm sorry.</p> <p>2 MR. WILLIGER: 14. Third from the top.</p> <p>3 MS. KELLER: Thanks.</p> <p>4 THE WITNESS: Yes, that is correct. But now</p> <p>5 he concludes that the -- that is just for the citrus</p> <p>6 and for the potato farming operation, that that doesn't</p> <p>7 include his highest and best use for the potential for</p> <p>8 future mining operations.</p> <p>9 BY MR. WILLIGER:</p> <p>10 Q. Okay. And in your opinion, do you agree</p> <p>11 with that?</p> <p>12 A. No. I think that that value is more</p> <p>13 applicable to all the uses of the subject property</p> <p>14 which includes its present agricultural uses as well as</p> <p>15 its future mining potential.</p> <p>16 Q. Okay. So if Mr. Gillott's report came in</p> <p>17 with amounts in excess of \$200 million, what you're</p> <p>18 saying is that the real value is in the range of</p> <p>19 33,600,000 or lower?</p> <p>20 A. That's correct.</p> <p>21 Q. And why is that?</p> <p>22 A. That would be upon market sales; the mining</p> <p>23 sales that we just alluded to, the acreage sales that</p> <p>24 are there south of the subject property, and other</p> <p>25 citrus grove -- ongoing citrus grove sales that I know</p>	<p>1 property?</p> <p>2 A. Again, this goes to his estimate as a going</p> <p>3 concern or that he has entitled reserves.</p> <p>4 Q. Neither of which are true in your opinion?</p> <p>5 A. That's right. And again, that's stated in</p> <p>6 his signature or in his copy that I have possibly of a</p> <p>7 certification. I can't tell which. And he has made</p> <p>8 the hypothetical assumption that the reserves are</p> <p>9 entitled and that the permits will be renewed as</p> <p>10 necessary to allow the mining of the reserves of up to</p> <p>11 70 feet in depth and 190 million tons, which is not</p> <p>12 correct. That is not applicable as of the date of</p> <p>13 valuation.</p> <p>14 Q. Is it likely to be applicable as to any date</p> <p>15 in the foreseeable future?</p> <p>16 A. In some distant time in the future possibly.</p> <p>17 Q. And I think that -- you mentioned that</p> <p>18 distant time in the future as potentially possibly 10</p> <p>19 years?</p> <p>20 A. Or greater.</p> <p>21 Q. Or greater. I think we've talked a little</p> <p>22 bit about the fact that the test borings are</p> <p>23 insufficient, and I don't want to keep going over the</p> <p>24 same thing more than once. And that would be on page</p> <p>25 14 in the paragraph right after that?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. Yes.</p> <p>2 Q. And then we also talked about the PREI</p> <p>3 Corkscrew property?</p> <p>4 A. Yes.</p> <p>5 Q. In the event, I guess, in your -- in the</p> <p>6 extraordinarily unlikely event that a permit is granted</p> <p>7 on this subject property to mine past a depth of 70</p> <p>8 feet, are there additional considerations?</p> <p>9 MS. KELLER: Objection.</p> <p>10 THE WITNESS: Repeat the question, please.</p> <p>11 (RECORD READ.)</p> <p>12 MR. WILLIGER: Economic considerations.</p> <p>13 THE WITNESS: Well, first of all, I doubt</p> <p>14 you'd get beyond 70 feet because the mine, PREI mine</p> <p>15 across the road is only 50 feet in depth, so it</p> <p>16 wouldn't be beyond 70 feet. Perhaps you're talking</p> <p>17 about going to a depth of 70 feet.</p> <p>18 BY MR. WILLIGER:</p> <p>19 Q. Okay. If you were going to a depth of 70</p> <p>20 feet, would that require a different type of mining</p> <p>21 equipment?</p> <p>22 A. Oh, absolutely. Because you can mine down</p> <p>23 to about the 30-foot level with track type vehicles,</p> <p>24 but when you start going down that deep, you would have</p> <p>25 to use drag lines and all, and the type of equipment</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Has he ever been a miner?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Has he ever worked in a mine?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Does he have credentials as similar to</p> <p>6 yours?</p> <p>7 A. Yes.</p> <p>8 Q. Does he have any better credentials than</p> <p>9 yours?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Okay. Let's move on to page 15 of your</p> <p>12 report where you continue at the top to talk about the</p> <p>13 portion of Mr. Gillott's report that discusses proposed</p> <p>14 highest and best use, and I think we've talked about</p> <p>15 the fact that any permit, if ever granted, would be in</p> <p>16 the distant future, 10 years in the future at least,</p> <p>17 right?</p> <p>18 A. Yes. And as a matter of fact, in his</p> <p>19 statement, I believe in his report, that the grove</p> <p>20 would continue to produce income for many years which</p> <p>21 means you couldn't mine it because you're operating the</p> <p>22 grove for many years.</p> <p>23 Q. Okay. Now, if you were going to mine this</p> <p>24 property, would you need a mining plan?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 can cost you a million dollars apiece. And then you</p> <p>2 may have two -- two of them on or three of them on a</p> <p>3 size property like this.</p> <p>4 Q. Did Mr. Gillott take any of this into</p> <p>5 consideration in his report?</p> <p>6 A. He said that it could cost up to \$5 million</p> <p>7 to build a wash plant to clean the product after it's</p> <p>8 been excavated and process it and put it into piles of</p> <p>9 different types of aggregates and so forth. But that</p> <p>10 is part of a going concern value which the subject is</p> <p>11 not a going concern.</p> <p>12 Q. Even though he considered the wash plant, he</p> <p>13 didn't really -- that would be after extraction, right?</p> <p>14 A. Yes.</p> <p>15 Q. Did he consider any costs of actual</p> <p>16 extraction?</p> <p>17 A. In his discounted cash flow, he talks about</p> <p>18 expenses to mine this particular property, and it was</p> <p>19 around \$4.10 a ton, I believe, and based upon my</p> <p>20 historical experience, that's probably a 15 to 20</p> <p>21 percent low at least, could be as high as \$5 a ton.</p> <p>22 Q. Has -- you've known Mr. Gillott?</p> <p>23 A. Yes, for many years.</p> <p>24 Q. How many years?</p> <p>25 A. Twenty maybe.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Have you ever seen a mining plan for this</p> <p>2 property?</p> <p>3 A. No, sir.</p> <p>4 Q. Does Mr. Gillott reference a mining plan for</p> <p>5 this property?</p> <p>6 A. Not that I recall.</p> <p>7 Q. All right. Let's move on to, again, page 15</p> <p>8 where you discuss the permit and just talk about this</p> <p>9 briefly. You have expressed an issue with</p> <p>10 Mr. Gillott's discussion in his report regarding</p> <p>11 permitting?</p> <p>12 A. Correct.</p> <p>13 Q. Could you talk about that issue?</p> <p>14 A. Again, we talked about the initial permit</p> <p>15 application being denied in 2002, and I alluded to the</p> <p>16 Bert Harris Act which is a compensation when</p> <p>17 effectively a county disallows you the economic use of</p> <p>18 your property.</p> <p>19 Q. In this case, is the county denying the</p> <p>20 Schwabs the economic use of their property as a citrus</p> <p>21 grove?</p> <p>22 MS. KELLER: Objection.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. WILLIGER:</p> <p>25 Q. Okay. Go ahead.</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. I did review the report, and without getting</p> <p>2 too technical, there's several standards like LBR, lime</p> <p>3 bearing ratios, which are reported to be between 110</p> <p>4 and 134. The quality of material required for FDOT</p> <p>5 base begins over 100, so they're qualified there in</p> <p>6 certain strata of the property. And then I looked at</p> <p>7 the LA abrasion test, and that was fine as well for a</p> <p>8 good portion of the subject property.</p> <p>9 Q. Now, Mr. Gillott didn't personally conduct</p> <p>10 any of these tests, did he?</p> <p>11 A. Not to my knowledge, no.</p> <p>12 Q. He doesn't say so in his report, does he?</p> <p>13 A. No, he does not.</p> <p>14 Q. He doesn't identify who conducted any of the</p> <p>15 tests that he references in his reports, does he?</p> <p>16 A. Not that I recall, no.</p> <p>17 Q. Okay. And then at the bottom of page 15,</p> <p>18 you have a paragraph that says that Mr. Gillott did not</p> <p>19 mention that on September 10, 2008, there was a</p> <p>20 12-month moratorium on permitting new mines?</p> <p>21 A. That's correct.</p> <p>22 Q. Could you discuss that moratorium a little</p> <p>23 bit?</p> <p>24 A. Well, they wanted to study this DR/GR area.</p> <p>25 Q. They being Lee County?</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. WILLIGER:</p> <p>2 Q. Moving to page 16 of your report, under your</p> <p>3 section Extraordinary Assumption.</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. And I know we've talked about this,</p> <p>6 and I don't intend to go back over things to the extent</p> <p>7 that I can avoid it. In the very first paragraph, you</p> <p>8 mention that Mr. Gillott presumed as fact otherwise</p> <p>9 uncertain information about the subject property?</p> <p>10 A. That's correct.</p> <p>11 Q. What are you referring to there?</p> <p>12 A. He doesn't mention anything about</p> <p>13 competition, what's happening in the market, the</p> <p>14 reduced demand for aggregate product. He -- he assumes</p> <p>15 that you're going to go to 70 feet, that you're going</p> <p>16 to expand from 630 to 1450 acres on this particular</p> <p>17 property and the amount of reserves. Those are all not</p> <p>18 knowns.</p> <p>19 Q. Should a appraiser like Mr. Gillott have</p> <p>20 considered the things that you've mentioned like</p> <p>21 demand, et cetera?</p> <p>22 A. Absolutely.</p> <p>23 Q. So did the appraiser have a reasonable basis</p> <p>24 for ignoring those things?</p> <p>25 MS. KELLER: Objection.</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes, that's correct.</p> <p>2 Q. Okay.</p> <p>3 A. That was -- has environmental issues, and</p> <p>4 Lee County adopted a Chapter 12 land development code</p> <p>5 for properties in this area, and they did an initial</p> <p>6 planning study that was completed, and the county</p> <p>7 commissioners agreed to accept the recommendation to</p> <p>8 restrict new mining activities in the Aleco mining</p> <p>9 corridor which the subject is a part thereof. And</p> <p>10 therefore, it will make it very difficult to obtain any</p> <p>11 permits.</p> <p>12 Q. And to the best of your knowledge, the</p> <p>13 Schwabs have not even made an application for a permit</p> <p>14 after September 2008?</p> <p>15 A. I do not have personal knowledge of that.</p> <p>16 Q. And Mr. Gillott didn't reference any permit</p> <p>17 that was pending after September 2008?</p> <p>18 A. Not in his summary report, no.</p> <p>19 Q. But in fact, if there was one, it -- this</p> <p>20 land development code, Chapter 12, would make it even</p> <p>21 less likely that a permit would be granted on the</p> <p>22 subject property?</p> <p>23 MS. KELLER: Objection.</p> <p>24 THE WITNESS: That's correct.</p> <p>25</p>	<p style="text-align: right;">Page 57</p> <p>1 THE WITNESS: Not to my knowledge.</p> <p>2 BY MR. WILLIGER:</p> <p>3 Q. In your opinion, did he have a reasonable</p> <p>4 basis for ignoring them?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Should they have been a part of any</p> <p>7 legitimate appraisal report?</p> <p>8 A. Yes. Now, I have to admit, in reviewing</p> <p>9 this, he says that this report that I have reviewed is</p> <p>10 a summary of a proposed -- of a self-contained</p> <p>11 appraisal report that is in progress. I've never seen</p> <p>12 this completed report.</p> <p>13 Q. So to your knowledge, Mr. Gillott never</p> <p>14 completed a report?</p> <p>15 A. As of this date to my knowledge, no.</p> <p>16 Q. Other than his summary dated February 26th,</p> <p>17 2010?</p> <p>18 A. Correct.</p> <p>19 Q. And then you go on and discuss that some of</p> <p>20 the things that Mr. Gillott did not take into</p> <p>21 consideration was current as well as anticipated demand</p> <p>22 for aggregate?</p> <p>23 A. That's correct.</p> <p>24 Q. And we've talked about that, correct?</p> <p>25 A. Correct.</p>

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<p>1 Q. Okay. In your experience, is it accurate to</p> <p>2 state that all mines in this area have significantly</p> <p>3 reduced demand that's continued to drop since 2007?</p> <p>4 MS. KELLER: Objection.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. WILLIGER:</p> <p>7 Q. In your experience, knowledge, and education</p> <p>8 of potential mining properties in Lee County, have you</p> <p>9 found that a number of mines that actually are</p> <p>10 permitted have been reverting back to the lenders?</p> <p>11 A. Yes. I know of two that specifically and</p> <p>12 possibly a third, yes.</p> <p>13 Q. And the same conditions that made these</p> <p>14 other mines revert to a lender exist with the subject</p> <p>15 property?</p> <p>16 A. Yes.</p> <p>17 MS. KELLER: Objection.</p> <p>18 THE WITNESS: Relative to the reduced demand</p> <p>19 and the significantly reduced pricing of materials,</p> <p>20 yes.</p> <p>21 BY MR. WILLIGER:</p> <p>22 Q. By the way, is Mr. Gillott qualified to make</p> <p>23 his own reserve estimates?</p> <p>24 A. He can render his own opinion if he wants.</p> <p>25 Q. Would they be legitimate reserve estimates</p>	<p>1 A. No.</p> <p>2 Q. Moving on to page 17 at the top of your</p> <p>3 report at the top, you have a section called</p> <p>4 Hypothetical Conditions. And you mention that</p> <p>5 Mr. Gillott made a hypothetical condition that the mine</p> <p>6 is operating. You see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. We all know that the mine -- there is no</p> <p>9 mine operating on the subject property; is that</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Is it appropriate for Mr. Gillott to make</p> <p>13 that as a hypothetical condition when it's not the</p> <p>14 case?</p> <p>15 A. I wouldn't in this particular case, no.</p> <p>16 Q. Why not?</p> <p>17 A. Again, this all gets to market demand,</p> <p>18 competitor supply, market trends, and the fact that it</p> <p>19 is an existing -- is not likely to be existing in the</p> <p>20 near future.</p> <p>21 Q. Would the fact that there is no permit to</p> <p>22 mine effectively on this property add into that</p> <p>23 equation?</p> <p>24 A. Absolutely.</p> <p>25 Q. Are the hypothetical conditions mentioned by</p>
Page 59	Page 61
<p>1 since he's not an engineer?</p> <p>2 A. I wouldn't make those.</p> <p>3 MS. KELLER: Objection.</p> <p>4 THE WITNESS: If I wasn't -- I'm not an</p> <p>5 engineer, and I'm not a geologist, and I wouldn't want</p> <p>6 to make that prediction without having the engineering</p> <p>7 reports to support that.</p> <p>8 BY MR. WILLIGER:</p> <p>9 Q. Okay. Have you seen any engineering reports</p> <p>10 that support Mr. Gillott's estimates?</p> <p>11 A. Well, there's the one engineering report</p> <p>12 that says you can do 2,000 tons per acre which is --</p> <p>13 which would render a different opinion than what</p> <p>14 Mr. Gillott has.</p> <p>15 Q. Okay. And that was based on the four bore</p> <p>16 holes that were in locations that the engineer would</p> <p>17 not disclose?</p> <p>18 A. Correct. Other than it was probably the</p> <p>19 four corners of the property.</p> <p>20 Q. And if it was the four corners of the</p> <p>21 property, would that be adequate to make reserve</p> <p>22 estimate for what is in the center of the property?</p> <p>23 A. If, for example, the property maybe was 150,</p> <p>24 200 acres, possibly. But for 2100, no.</p> <p>25 Q. For 1450?</p>	<p>1 Mr. Gillott in his report contrary to known physical,</p> <p>2 legal or economic characteristics of this subject</p> <p>3 property?</p> <p>4 MS. KELLER: Objection.</p> <p>5 THE WITNESS: Yes, sir.</p> <p>6 BY MR. WILLIGER:</p> <p>7 Q. Okay. In your report on page 17, you talk</p> <p>8 about the estimate of value of reserves, and I think</p> <p>9 we've talked about that already.</p> <p>10 A. Yes, sir.</p> <p>11 Q. Is there anything for you to add about that?</p> <p>12 A. Again, other than other mines, the nearest</p> <p>13 mine to the subject property only be allowed a 50-foot</p> <p>14 depth, okay, and less than 300 tons a year in this</p> <p>15 particular location, the fact that also that the --</p> <p>16 it's very distant to the interstate for haul routes and</p> <p>17 that you have to go by all these other mining</p> <p>18 operations before you get to the subject property. You</p> <p>19 know, in his analysis of some of his sales, he adds</p> <p>20 \$20,000 per acre upward adjustment which is not</p> <p>21 supported for those that were not entitled.</p> <p>22 Q. Okay. Now, if Mr. Gillott's</p> <p>23 extraordinary -- what did he call them? Extraordinary</p> <p>24 assumptions and hypothetical conditions about things</p> <p>25 that might never happen in the future were incorrect,</p>

16 (Pages 58 to 61)

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<p>1 would that have an effect on the value he found for 2 this subject property?</p> <p>3 A. Yes. I guess to give an example, since 4 we're here in Boone, which is sort of a rural town in 5 the mountains, as you noticed in town, there's no 6 buildings over five stories. That would be like 7 assuming you would build a 20-story building here, that 8 the building was already up, it was already generating 9 revenues, that you had leasing agents, you had 10 maintenance people, and you had all that, that would be 11 similar to a going concern. None of that exist at the 12 subject property.</p> <p>13 Q. And that would account, I guess, for 14 Mr. Gillott's extraordinarily high value?</p> <p>15 A. Yes, it would.</p> <p>16 Q. And if any of those extraordinary 17 assumptions or conditions were found, as they are found 18 to be not present, that would have a significant 19 downward effect on the value of this property?</p> <p>20 A. Yes, and I think that if you get into it 21 later talking about competitive properties, either for 22 sale or under contract, and the pricing of product and 23 so forth, that will go to the validity or credibility 24 of his assessment.</p> <p>25 Q. Well, let's talk about that now. Did you --</p>	<p>1 operation, Collier Aggregates, actually has permits in 2 place unlike the subject property?</p> <p>3 A. It's a permitted operating mine with 4 approved permits and quantifiable reserves, yes.</p> <p>5 Q. Okay. And that equated to \$12,308 per gross 6 acre as opposed to Mr. Gillott's hundred thousand 7 dollars per acre?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Go ahead with the next property.</p> <p>10 A. The other property is on Corkscrew Road near 11 the subject property. The offer was \$16 million but 12 included in that \$16 million is about 3 million -- 13 actually, there's over \$5 million of equipment there, 14 but on a liquidation value, you'd only get about \$3 15 million for that equipment.</p> <p>16 And based upon my conversation with the 17 plant manager, there's about 750,000 tons of aggregate 18 that's sitting on the ground right now ready to be sold 19 that's been washed and processed, so you need to 20 subtract that out from the offering price. And 21 basically, that equates to about 55 cents per ton.</p> <p>22 Later on, under the royalty method and 23 everything, Mr. Gillott says that he values the tonnage 24 at a dollar 10 per ton which is clearly not the case in 25 this market environment. That might have been</p>
Page 63	Page 65
<p>1 did you review those things?</p> <p>2 A. Yes, I did. As a matter of fact, I think --</p> <p>3 Q. I think you mentioned them on page 18 if I'm 4 not incorrect.</p> <p>5 A. Let's see.</p> <p>6 Q. And 19.</p> <p>7 A. Yes. But more specifically on page 19. For 8 example, there's the Jones mining that's been available 9 for sale, and if Mr. Gillott, based on his background, 10 should know of this offering for sale in the open 11 market that's been there for several years.</p> <p>12 It's called actually Collier Aggregates now. 13 It's available to be purchased for \$32 million. It's 14 2600 acres and has 74 million tons of aggregate roughly 15 on a thousand acres. This equates to \$12,308 per gross 16 acre or 32 cents per ton. Now, there's an offer to 17 purchase on the PREI. Again, this is confidential.</p> <p>18 Q. Let's stay with Jones mining for a moment.</p> <p>19 A. Okay.</p> <p>20 Q. Is this in the area of the subject property?</p> <p>21 A. I would consider it to be an inferior area, 22 although if you're going to haul material to Miami, 23 it's much closer to the Miami area than the subject 24 property.</p> <p>25 Q. And this property, the Jones mining</p>	<p>1 something that was applicable several years ago in the 2 heat, height of the market but not in today's market.</p> <p>3 Q. Did Mr. Gillott in his report consider 4 anything about the two properties you just discussed?</p> <p>5 A. No, he did not.</p> <p>6 Q. He ignored them?</p> <p>7 A. He did not mention them.</p> <p>8 Q. He did not mention them?</p> <p>9 A. No.</p> <p>10 Q. And if he had mentioned them and taken them 11 into account, he certainly wouldn't have come up with 12 his inflated hundred thousand dollar per acre, would 13 he?</p> <p>14 MS. KELLER: Objection.</p> <p>15 THE WITNESS: That's correct.</p> <p>16 BY MR. WILLIGER:</p> <p>17 Q. Sorry?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Let's go back to page 17. I think 20 we've discussed your opinions based on page 17?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And on page 18, I think that in the 23 middle, you talk about 3 sales with similar zoning 24 characteristics to the subject property?</p> <p>25 A. Yes. Being either on Corkscrew Road and/or</p>

17 (Pages 62 to 65)

Page 66	Page 68
<p>1 being agricultural citrus groves with mining potential 2 and being purchased for future mining potential. 3 Q. Mr. Catlett, are you saying that -- well, 4 let me back up. For all of these sales, we're talking 5 about comparable sales; is that correct? 6 A. That is correct. 7 Q. And for all of these sales, Mr. Gillott 8 omitted them from his report? 9 A. They're not included in his report. 10 Q. So would it be your judgment that 11 Mr. Gillott cherry-picked the sales for his report to 12 inexplicably and inappropriately inflate the value of 13 this acreage? 14 MS. KELLER: Objection. 15 THE WITNESS: I don't know the reason for 16 his choice, but it clearly indicates that not all the 17 market data was considered. 18 BY MR. WILLIGER: 19 Q. Would an appraiser subject to the MAI 20 obligations be permitted to just ignore sales if they 21 didn't meet -- just ignore sales in the area if they 22 were relevant? 23 MS. KELLER: Objection. 24 THE WITNESS: No. I think you would need to 25 talk about those sales. Now you may not consider for</p>	<p>1 and I'm just doing the general range of 9 to 11,000 2 dollars per acre, that perhaps these were more 3 agricultural. 4 Well, with the potential for mining, there 5 is the contributory value that would be the difference 6 between say 11,000 and 15 or 16,000. That would be the 7 future contributory value that should be applicable to 8 these future reserves in the distant future. 9 Q. And that would be in part of the adjustment 10 calculation? 11 A. That's correct. 12 Q. Okay. Now is it fair to say that you've 13 appraised over a hundred parcels within five miles of 14 this subject property? 15 A. Yes. 16 Q. And that you've -- within this hundred 17 parcels, you've appraised numerous citrus groves that 18 have reserves potentially like this subject property? 19 A. I wouldn't say numerous citrus groves, no. 20 Several citrus groves. 21 Q. Okay. Anything else on 19 that we have not 22 gone over? 23 A. I make a statement that the price paid per 24 ton is -- can be a meaningful unit of comparison 25 provided there is demand for the product under better</p>
Page 67	Page 69
<p>1 what particular reason that comparable to be -- or that 2 sale to be comparable to your subject property, but you 3 should at least discuss the sales that are available 4 and have occurred as relates to market sales and market 5 value. 6 BY MR. WILLIGER: 7 Q. Okay. Is there anything else on your -- on 8 your report on page 18 or 19 that we haven't discussed? 9 A. Basically, that it would be my opinion that 10 the fair market value of this property would range from 11 31 million 5 to 33,600,000 dollars for the subject 12 property based upon all those sales that I did include 13 in my addenda as support for my opinion of value. 14 Q. And when you say 31,500,000 to 33,600,000, 15 that would be fair market value? 16 A. Yes, for all potential uses of the subject 17 property. 18 Q. Including potential mining, if it ever 19 happens? 20 A. Yes. 21 Q. And then as we discussed -- we're not going 22 to go over it again -- your orderly and liquidation 23 value would be less? 24 A. Yes. And I think we need to point out that 25 when we looked at all these other market comparables</p>	<p>1 market conditions that are not overbuilt, with 2 anticipated future demand declining from the previous 3 highs, and very low population growth expected in this 4 area, and with a very high unemployment rate of around 5 12 to 13 percent. 6 Q. Okay. Now, let's move to page 20 and the 7 royalty analysis. You indicate that the price per ton 8 of \$1.10 found by Mr. Gillott cannot be supported by 9 today's market? 10 A. In today's market, yes. 11 Q. Why is that? 12 A. Just by the two examples that I gave you 13 right there. And to assume that you're going to pay a 14 dollar and 10 cents for a ton in 10 or 20 years from 15 subject -- while I'm addressing that, let's go to his 16 cash flow, for example. 17 MS. KELLER: Am I correct that you're not 18 going to enter it as exhibit, that he's going to go 19 through and discuss it? 20 MR. WILLIGER: I presume you're going to 21 enter it as an exhibit if you can. 22 MS. KELLER: Please note for the record that 23 he's looking through Mr. Gillott's report. 24 THE WITNESS: Mr. Gillott's. 25</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 BY MR. WILLIGER:</p> <p>2 Q. And do you know what -- I think I just got a</p> <p>3 sign from the court reporter we've only got five</p> <p>4 minutes. While you're looking, why don't we take a</p> <p>5 short break?</p> <p>6 A. Can we finish this up and then do it?</p> <p>7 MR. WILLIGER: Sure, if there's enough time.</p> <p>8 THE WITNESS: Oh, I'm sorry.</p> <p>9 MR. WILLIGER: He's got four minutes to go.</p> <p>10 THE WITNESS: Oh, four minutes?</p> <p>11 BY MR. WILLIGER:</p> <p>12 Q. So if you can do it in four minutes, yes.</p> <p>13 A. Yes, yes. On his discounted cash flow that</p> <p>14 he talks about the going concern value, he discounts</p> <p>15 all the cash flows for the first 10 years, which is the</p> <p>16 appropriate thing to do. But again, we have to</p> <p>17 question 500 tons, which is probably only 250 to 300</p> <p>18 tons.</p> <p>19 We have to estimate -- we definitely --</p> <p>20 there's no support for \$10 a ton, and I'll talk about</p> <p>21 that later. And then there's a question of at \$4.01,</p> <p>22 is this the correct operating expense, which I think is</p> <p>23 15 to 20 percent low, which would indicate a lower net</p> <p>24 income to this particular property than is forecast by</p> <p>25 Mr. Gillott.</p>	<p style="text-align: right;">Page 72</p> <p>1 on page 20 of your report?</p> <p>2 A. No. But in that last calculation I made</p> <p>3 about present value from this 202 million down to the</p> <p>4 present value of 65 million, at the break, I just</p> <p>5 divided it by the tonnage. That would have been 35</p> <p>6 cents a ton.</p> <p>7 Q. As opposed to the dollar 10 cents a ton</p> <p>8 Mr. Gillott uses?</p> <p>9 A. That's correct.</p> <p>10 Q. Now, on page 21 at the very top, you talk</p> <p>11 about -- you make a statement, "The conclusion of 209</p> <p>12 million to 210 million is deemed to be too speculative</p> <p>13 based on the review -- on your review." Could you</p> <p>14 explain why that is?</p> <p>15 A. I think we've alluded to it many times</p> <p>16 before.</p> <p>17 Q. Okay. So again --</p> <p>18 A. Yeah.</p> <p>19 Q. If you're satisfied with that, that's fine.</p> <p>20 And then on the going concern value, could you explain</p> <p>21 your position on Mr. Gillott's report in connection</p> <p>22 with going concern value to the extent that we haven't</p> <p>23 said it before?</p> <p>24 A. Well, if either the 70 foot is incorrect or</p> <p>25 the 1450 is incorrect and they're false, then the whole</p>
<p style="text-align: right;">Page 71</p> <p>1 But the most important thing that I see here</p> <p>2 is that after you've gone through 10 years of supply,</p> <p>3 okay? He says there's 183.8 million tons of reserve</p> <p>4 left at the end of 10 years. Okay? At a dollar and 10</p> <p>5 cents a ton.</p> <p>6 Well, the question is, that's a future</p> <p>7 value. Just like on December of 2019, he discounts</p> <p>8 that cash flow at a 12 percent discount rate, which I</p> <p>9 don't have an issue with. That factor is .32197. If</p> <p>10 you were to apply that to the \$202,180,000 -- whoops.</p> <p>11 I missed a zero -- times .32197, that would only</p> <p>12 indicate a present value of \$65,095,000 that he says is</p> <p>13 worth \$202,000,000. He didn't discount that future</p> <p>14 value to today's dollars. So, you know, there's the</p> <p>15 overstatement from 202 to 65 million dollars.</p> <p>16 MR. WILLIGER: Okay. Ready for a break?</p> <p>17 VIDEOGRAPHER: This marks the end of tape 1.</p> <p>18 The time on the monitor is 10:07.</p> <p>19 (RECESS TAKEN FROM 10:07 A.M. TO 10:16 A.M.)</p> <p>20 VIDEOGRAPHER: Stand by. This marks the</p> <p>21 beginning of tape 2. We are on the record. The time</p> <p>22 is on the monitor is 10:16.</p> <p>23 BY MR. WILLIGER:</p> <p>24 Q. Mr. Catlett, I think we were talking about</p> <p>25 the royalty analysis. Is there anything for you to add</p>	<p style="text-align: right;">Page 73</p> <p>1 analysis of the discounted cash flow is meaningless.</p> <p>2 Q. Or a permit isn't obtained?</p> <p>3 A. That's correct. And that he assumes that</p> <p>4 the mining would begin in 2010. It would take you at</p> <p>5 least six months to a year to mobilize, to find your</p> <p>6 equipment, to get it out to the property, if you had</p> <p>7 the permits in place, which he doesn't. And then to</p> <p>8 assume that you're going to start out with 500 tons a</p> <p>9 year, when I've discussed several times that the mine</p> <p>10 almost across the road hasn't done 300 and expects to</p> <p>11 do less than about 250 the next 2 years, that would be</p> <p>12 an overstatement of the production that this particular</p> <p>13 property could have.</p> <p>14 Q. And then you mentioned, I believe, that one</p> <p>15 of the properties that you have reviewed has -- I could</p> <p>16 be completely wrong on this number -- 750,000,000 tons</p> <p>17 of product just sitting there?</p> <p>18 A. No. That's \$750,000 of material sitting on</p> <p>19 a nearby property.</p> <p>20 Q. Okay. And I presume that in the Florida</p> <p>21 market, that would all have to be sold and disposed of</p> <p>22 before a competitor could come in and begin to sell</p> <p>23 aggregate?</p> <p>24 MS. KELLER: Objection.</p> <p>25 THE WITNESS: That's correct. And like I</p>

19 (Pages 70 to 73)

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<p>1 say, based upon my investigations in doing this PREI 2 mine for a lending institution, there is over 460 3 million tons of aggregate that is known to be reserves 4 that's already have permits in place and are operating 5 mines that would -- you would have to compete with 6 BY MR. WILLIGER: 7 Q. Okay. Now, on page 21, you state that 8 Mr. Gillott forecast sales on average of 620,000 tons 9 per annum over 10 years? 10 A. Yes. 11 Q. And then to absorb his remaining estimate of 12 183.8 million tons, you say that that's 296.4 years of 13 supply? 14 A. That's correct. 15 Q. How did you calculate that? 16 A. Well, you just divide the 183 million 800 by 17 620,000. 18 Q. So what Mr. Gillott is apparently talking 19 about in his report, if any of this ever happens, we're 20 talking about a supply of aggregate that would last 21 almost 300 years? 22 A. Based upon this rate of absorption or 23 sell-off. 24 Q. You next mentioned that demand is not 25 perceived to increase for another five years at best.</p>	<p>1 we're not going to sell anything we mine on the open 2 market. We're just going to use it ourselves for our 3 own projects. How would you respond to that? 4 A. Well, you'd have to show me where the demand 5 for the product is going. There's not going to be a 6 lot of new construction, a lot of new highway 7 construction, no new subdivisions and so forth. So 8 what are you going to use that material for? 9 Q. On page 22, we're still talking about the 10 going concern value. I believe we've talked about the 11 first paragraph, especially the use of -- by 12 Mr. Gillott of \$10 per ton as an overstatement? 13 A. Yes, definitely. Well, compared to the 14 average sales prices have dipped below \$8 a ton right 15 now and are more specifically at, you know, some 6 to 16 7.25 a ton, and then, for example, in late 2008, the 17 average price of this aggregate was between 8 and 13 18 dollars a ton, the current pricing at 8 providers 19 ranges from 4.50 to 6 dollars a ton, so it barely 20 covers their processing costs, and that's just to keep 21 the mines open. 22 Q. Okay. Anything more on page 22 that we 23 haven't already discussed during your deposition 24 because, again, I'm trying to, I know I'm trying to 25 move through a lot of very -- information quickly.</p>
Page 75	Page 77
<p>1 So would one conclude from that that even if there was 2 a permit and they had the money to get up and running 3 on mining and they actually produced aggregate and the 4 existing aggregate sitting around was somehow depleted, 5 we're talking about some point well into the future for 6 even using aggregate being that could be mined from 7 this property to be useful? 8 A. If I understand the question correctly, I 9 don't think you would use all of the existing supply. 10 You might have used up the existing stockpiles in 11 inventory that are on the site and some of the supply 12 but not all of the supply. You'd still have a 13 significant supply in all these competitor mining 14 operations. 15 Q. That's already existing? 16 A. That's correct. 17 Q. And these competitor operations are the ones 18 that have reverted in some cases to the lender? 19 A. In two cases that I know of specifically. 20 And I understand from a very reliable source, the 21 Florida Dirt Source, which is the largest hauler of 22 material in all of southwest Florida, that there may be 23 an issue with the Youngquist mine going to the lender 24 as well. And this is confidential information. 25 Q. What if Schwab came back and said, well,</p>	<p>1 A. I discussed that I think that the -- I've 2 talked about the mining cost of using is proforma or on 3 the low side at \$4.01 a ton, and that there is a 4 question as to whether you could have a sinking fund, 5 and he refers to it as the Hoskold method in here. 6 Q. Hoskins or -- 7 A. Hoskold, H-O-S-K-O-L-D. And that you would 8 reinvest these funds at 4 percent at a bank. I don't 9 know where you're getting 4 percent at a bank right 10 now, but that's typically not what these processors do. 11 Q. All right. That takes us to page 23 of your 12 report which is, I think, a summary of what we've 13 discussed? 14 A. That is correct. 15 Q. Okay. And basically that Mr. Gillott's 16 report is based on too many extraordinary assumptions 17 that don't exist today and are very unlikely to exist 18 in the future; is that accurate? 19 A. That's correct. 20 Q. And that the limiting conditions fall in the 21 same category? 22 A. Yes. Hypothetical conditions. 23 Q. The hypothetical conditions. Okay. And 24 that therefore, in your professional opinion, based on 25 your knowledge, education, experience, Mr. Gillott's</p>

20 (Pages 74 to 77)

Page 78	Page 80
<p>1 report is misleading?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then we've talked about the</p> <p>4 values, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that your value for the subject property</p> <p>7 of 32 and a half million to 33.6 million assumes all of</p> <p>8 the potential reserves that are on that property, not</p> <p>9 just used as a citrus grove?</p> <p>10 MS. KELLER: Objection.</p> <p>11 THE WITNESS: That is correct.</p> <p>12 MS. KELLER: I'm just going to make a</p> <p>13 standing objection to leading so you can go on.</p> <p>14 MR. WILLIGER: And the reason I'm doing that</p> <p>15 is because I know the judge is going to have very</p> <p>16 little patience for a lot of lengthy testimony.</p> <p>17 MS. KELLER: I understand.</p> <p>18 MR. WILLIGER: So I'm just trying to get</p> <p>19 through it.</p> <p>20 MS. KELLER: I understand. I just want to</p> <p>21 make a standing objection.</p> <p>22 BY MR. WILLIGER:</p> <p>23 Q. Now, in the last paragraph on that page, you</p> <p>24 talk about -- well, let's move on from that because I</p> <p>25 do want to -- we have flights, and I do want to give my</p>	<p>1 A. There is not.</p> <p>2 Q. We talked a little bit about your experience</p> <p>3 appraising properties that involve mines.</p> <p>4 A. Yes.</p> <p>5 Q. Can you estimate how many?</p> <p>6 A. Probably about a dozen lime rock mines and</p> <p>7 about the same number of phosphate mines. Then there</p> <p>8 are several dirt mines as well.</p> <p>9 Q. So --</p> <p>10 A. Let's say less than 30.</p> <p>11 Q. Less than 30 over how many years?</p> <p>12 A. The last 10 to 15 years.</p> <p>13 Q. Now, is it fair to say that appraisals in</p> <p>14 general are just opinions?</p> <p>15 MR. WILLIGER: Objection. Go ahead.</p> <p>16 THE WITNESS: They are opinions, but there</p> <p>17 should be a reasonable degree of similarity relative to</p> <p>18 the final opinions of value.</p> <p>19 BY MS. KELLER:</p> <p>20 Q. Okay. So again, is it fair to say yes or no</p> <p>21 that appraisals are just opinions to begin with?</p> <p>22 A. Correct. Based upon market data.</p> <p>23 Q. And I believe you stated earlier that you</p> <p>24 never formally appraised the Schwab property; is that</p> <p>25 correct?</p>
Page 79	Page 81
<p>1 opposing counsel an opportunity to get in here and do</p> <p>2 some cross-examination. Is there anything -- you know</p> <p>3 what, instead of saying that, let me just take a</p> <p>4 two-minute break and finish up the questioning and then</p> <p>5 turn it over.</p> <p>6 VIDEOGRAPHER: We're going off the record.</p> <p>7 The time on the monitor is 10:26.</p> <p>8 (RECESS TAKEN FROM 10:26 A.M. TO 10:31 A.M.)</p> <p>9 MR. WILLIGER: Okay. We can go on.</p> <p>10 VIDEOGRAPHER: We are on the record. The</p> <p>11 time on the monitor is 10:31.</p> <p>12 MR. WILLIGER: Mr. Catlett, thank you for</p> <p>13 your time. No further questions at this point.</p> <p>14 MS. KELLER: I have an extra copy. I think</p> <p>15 they're the same thing if you want to --</p> <p>16 (OFF-THE-RECORD DISCUSSION.)</p> <p>17 MS. KELLER: Are we on?</p> <p>18 VIDEOGRAPHER: We're on, yes.</p> <p>19 MS. KELLER: Am I on?</p> <p>20 VIDEOGRAPHER: You are.</p> <p>21</p> <p>22 BY MS. KELLER:</p> <p>23 Q. Okay. I know we're pretty far into this</p> <p>24 already, but is there any reason today that you can't</p> <p>25 testify accurately or truthfully?</p>	<p>1 A. That's correct.</p> <p>2 Q. Now going back to the experience that you</p> <p>3 have with appraising property involving mines, how were</p> <p>4 you engaged just in general to appraise those</p> <p>5 properties? What was your role?</p> <p>6 A. I was generally engaged by a law firm, a</p> <p>7 lender or the mining owners.</p> <p>8 Q. Does the focus of your appraisal change at</p> <p>9 all depending on who engages you?</p> <p>10 A. Absolutely not.</p> <p>11 Q. And have you ever appraised properties that</p> <p>12 have had -- where permitting has been an issue?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And can you tell me a little bit</p> <p>15 about some of those?</p> <p>16 A. Well, I probably can give you the most</p> <p>17 recent example. Property in Plant City, Florida.</p> <p>18 Approximately 600 acres in size. I was retained by the</p> <p>19 lender. This was a deficiency judgment case heard in</p> <p>20 front of -- I forgot the judge name now.</p> <p>21 In any event, the opposing appraiser said</p> <p>22 that this property was suitable to build around 700</p> <p>23 units on this particular property and that it was</p> <p>24 vested and the property owner could go forward with</p> <p>25 development.</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Well, when I actually talked to the zoning 2 and the planning people, which they testified at the 3 trial, they had given him a conditional permit. Okay? 4 Subject to -- and one of the qualifications was that 5 they put in a two and a half million dollar loop system 6 for water and sewer. So they never did that. So they 7 could never get the permits they needed to build the 8 development. 9 Therefore, the appraiser made an incorrect 10 assessment in that the property was vested when, in 11 fact, it wasn't. And therefore, instead of selling for 12 the -- or having a value that the appraiser put of 13 nearly \$13 million, the fair market value was estimated 14 around 5.8, and the liquidation value, I think, was 15 \$4.2 million. 16 Q. Okay. So in that situation, the opposing 17 appraiser gave an opinion on a piece of land without 18 actually having the permit? 19 A. That's correct. 20 Q. Is that common? 21 A. He should -- he can do that, yes. 22 Q. Okay. So it's not -- I hate to use the word 23 "extraordinary," but it's not unusual for an appraiser 24 to be called in and asked to appraise property with a 25 permit and without a permit?</p>	<p style="text-align: right;">Page 84</p> <p>1 based upon all of the market data, not just a portion 2 of market data relative to the sales, to, in this case, 3 the price per ton, the price of the product, the 4 production capacity of this particular -- proposed 5 mining operation. None of that exists. 6 Q. I understand that. But it's not out of the 7 ordinary to appraise -- just yes or no -- it's not out 8 of the ordinary to appraise a property with a permit or 9 without? 10 A. Correct. 11 MR. WILLIGER: Object. 12 BY MS. KELLER: 13 Q. Have you ever appraised a property with a 14 permit or without, yes or no? 15 MR. WILLIGER: Objection. 16 THE WITNESS: I don't recall having done one 17 without a permit. 18 BY MS. KELLER: 19 Q. Okay. Now, the cases that you just talked 20 about where there were issues with permits, were the 21 permits always obtained in those cases? 22 A. No, they were not obtained. 23 Q. Okay. And that would be the permits that 24 the opposing side was trying to obtain? 25 A. Correct.</p>
<p style="text-align: right;">Page 83</p> <p>1 A. That's correct. But you must have a 2 reasonable degree of probability or knowledge. 3 For example, if I were going to presume that 4 a permit was going to be there, I would want to be 5 talking to officials at the county about that, the 6 legal -- the possibility to talk about land planners 7 about having the zoning changed to be compatible with 8 the future land use, those kinds of things to see if 9 that was reasonably probable because if it's not 10 reasonably probable, I'm not going to appraise that 11 property just because the client has asked me to 12 appraise it with or without permits. 13 Q. And why not? 14 A. Because if it doesn't have a degree of 15 probability of coming to fruition, then it's totally a 16 pie in the sky estimate. 17 Q. But is that your call to make if a client 18 says, I have a plot of land. It's not permitted for 19 this, but can you just give me an appraisal based on 20 what it would be worth if I got the permit? Don't 21 worry about me getting the permit. Just give me the 22 appraisal based on if I had it? 23 A. In the event that a client asked me to do 24 that and I had sufficient information to agree with 25 that assessment, yes, you can. But then it would be</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Okay. So you yourself have never appraised 2 a property where it was contingent on a permit? 3 A. No. I've appraised properties where, 4 example, there might have been a change in the zoning 5 to comply with the future land use. But if the future 6 land use was superior to the zoning, and there were 7 permitted uses, I have done that, yes. 8 Q. Can you explain that one more time? 9 A. In Florida, future land use effectively 10 trumps zoning. Okay? If I have a land use that allows 11 three units per acre and my zoning is one unit per 12 acre, I can go get my zoning changed to allow up to the 13 three units per acre, and it will most likely be 14 granted. There will be some cost and some time delay 15 and some engineering and legal fees and so forth. But 16 that's a legal and probable outcome. 17 Q. Okay. So you've done it in situations where 18 it's residential? 19 A. Residential and commercial. 20 Q. Okay. Have you had occasions to come up 21 with similar issues regarding permitting with mining 22 cases? 23 A. There have been, for example, in the PREI 24 mine across the road, the buyers were not mining people 25 but regular investors from Philadelphia that had no</p>

22 (Pages 82 to 85)

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<p>1 mining experience. They purchased it on the fact that</p> <p>2 they thought they could get a change from their 50-foot</p> <p>3 depth to a greater depth which was not granted.</p> <p>4 Q. Okay.</p> <p>5 A. So.</p> <p>6 Q. Have you ever appraised property that could</p> <p>7 potentially be used as a mine and was contingent on a</p> <p>8 permit?</p> <p>9 A. Not contingent upon a permit.</p> <p>10 Q. Okay. Now, I came across a case that you</p> <p>11 worked on, and it was -- I'll give you the case type</p> <p>12 because I don't have a copy for everybody, but it was</p> <p>13 Beeler versus IRS back in '97, and the cite for the</p> <p>14 record is 1997 West Law 52498.</p> <p>15 A. Refresh my memory.</p> <p>16 Q. And it was -- you don't have instant recall?</p> <p>17 It was a case where the owners brought the property to</p> <p>18 be a mobile home park. And they had sold it and then</p> <p>19 there was tax issues of how it could be used.</p> <p>20 A. I really don't recall it, but anyway --</p> <p>21 Q. Because it seems like it might be a little</p> <p>22 bit similar, and I want to know just a little bit more</p> <p>23 about it if I can. And this is just an excerpt if I</p> <p>24 could read it for the record.</p> <p>25 It says: "Respondent called Catlett as an</p>	<p>1 I was working for the IRS on that one or --</p> <p>2 Q. No, the homeowner.</p> <p>3 A. Okay.</p> <p>4 Q. I believe. Looks like the homeowners.</p> <p>5 A. I testified for and against the IRS on</p> <p>6 numerous occasions.</p> <p>7 Q. That's got to be fun.</p> <p>8 A. Getting ready to go to Philadelphia on one.</p> <p>9 Q. Okay. And then the court goes on to say,</p> <p>10 "The \$1.2 million exchange value is consistent with</p> <p>11 Catlett's appraisal of the 76.5 acres because it was</p> <p>12 contingent on the issuance by Pasco County of the</p> <p>13 needed permits to the buyers, not because petitioners</p> <p>14 transferred their permits to the buyers." So it seems</p> <p>15 like it was maybe a little bit similar. It was</p> <p>16 contingent.</p> <p>17 A. I think that they were in the process of</p> <p>18 obtaining their permits at that particular point in</p> <p>19 time. But I don't totally recall.</p> <p>20 Q. Okay. But it's possible that you appraised</p> <p>21 it contingent on a permit with or without?</p> <p>22 A. Could be, yes.</p> <p>23 Q. So again, going back to my original point,</p> <p>24 it's not unusual for an appraiser to have to appraise</p> <p>25 land conditioned on a permit?</p>
Page 87	Page 89
<p>1 expert witness to appraise the 76 acres as of June</p> <p>2 1990. He testified that the 76.5 acres would be worth</p> <p>3 1,163,000 with permit and \$710,000 without permits.</p> <p>4 A. If that's what I said. I just don't recall.</p> <p>5 Q. So then it's possible, as you sit here</p> <p>6 today, that you've similarly appraised a property?</p> <p>7 A. I don't remember the conditions of that.</p> <p>8 Q. Okay.</p> <p>9 A. So. Did you pull up mine that went to the</p> <p>10 Supreme Court of Florida, too?</p> <p>11 Q. No. I might have. In this case, I think it</p> <p>12 was the -- it was -- maybe if I give you a few facts,</p> <p>13 it will refresh your memory. It was a mobile home park</p> <p>14 called Brentwood Estates in Pasco County, Florida. And</p> <p>15 the owners -- was vacant land zoned for a mobile home</p> <p>16 park. And it had to do with sand mining. Ring a bell</p> <p>17 yet?</p> <p>18 A. Sort of the sand mining. Yeah, I think it's</p> <p>19 off of 19.</p> <p>20 Q. I don't know the acre. But just looking</p> <p>21 through this, it appeared that the issue was the value</p> <p>22 with the permit and without a permit. And I just</p> <p>23 didn't know if you had -- if you recalled that or if it</p> <p>24 was similar in terms of, you know, this case.</p> <p>25 A. I don't. And I -- in this case, is that one</p>	<p>1 A. Correct.</p> <p>2 Q. What percentage of your practice is related</p> <p>3 to appraising this type of property, the Schwab</p> <p>4 property?</p> <p>5 A. That's a little hard to answer in that</p> <p>6 because of the size of this property, 2100 acres. We</p> <p>7 just did a 6,000 acre ranch. We just did Adams Ranch,</p> <p>8 you know. I do a lot of properties for the Florida</p> <p>9 Department of Environmental Protection. I said I was</p> <p>10 involved over a million acres and the water management</p> <p>11 districts. They buy these kinds of properties all the</p> <p>12 time, so we're either -- I'm either in the appraisal</p> <p>13 mode or the review mode for those acquisitions.</p> <p>14 Q. Do you do mostly commercial or residential</p> <p>15 or is it a split?</p> <p>16 A. We don't do very much residential. It's</p> <p>17 almost exclusively commercial type properties. A lot,</p> <p>18 a lot of agricultural properties.</p> <p>19 Q. Okay. Do you know much about the</p> <p>20 residential housing market then or do you --</p> <p>21 A. Oh, yes, I do keep up with that. Like I</p> <p>22 say, as I mentioned earlier, I just did a reclaimed</p> <p>23 water plant in Bonita Springs for 4200 users and 17</p> <p>24 golf courses, and I'm very familiar with that</p> <p>25 submarket, and also, I alluded to, in part of the</p>

23 (Pages 86 to 89)

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<p>1 addendum of my report, the Metro Study which tracks 2 residential; that there's a 187-month supply of single 3 family developed lots already there, and that in the 4 height of the market, there was a demand for 5 approximately 9 or 9500 homes a year, and there's 6 probably only I think 1200 or so last year. Just shows 7 the significant decline in that market segment plus the 8 number of foreclosures that have come around in the 9 last year or so forth, short sales, really issues with 10 Cape Coral if you know that area. So Lee County has 11 got some significant declining prices in real estate. 12 Q. What percentage of property do you appraise 13 from your practice in Lee County? 14 A. Depends on the year. Like I say, I'm 15 doing -- I just finished that property. I'm doing 12 16 more properties for the South Florida Water Management 17 District. I'm in the process of doing another mining 18 operation down there, so we're down there quite a bit. 19 But I would have to say, if I had to, maybe 10 percent. 20 Q. Okay. And the rest is throughout various 21 other parts of Florida? 22 A. Yes. 23 Q. And what percentage of your practice is 24 litigation versus non-litigation related work? 25 A. Well, in the last year, that has picked up</p>	<p>1 have you ever been involved in a case similar to this 2 one where you're performing evaluation of assets for a 3 debtor in a bankruptcy proceeding? 4 A. Yes. 5 Q. Or a creditor? 6 A. Yes. 7 Q. And how many of those have you done? 8 A. Over what period of time? 9 Q. Last 10 years? 10 A. Last 10 years? Most of that has come 11 around, I think, in the last two years. 12 Q. Okay. 13 A. And a dozen cases or so. 14 Q. Would you say that you are retained equally 15 on behalf of the creditors and the debtors or is it 16 more creditors or debtors? 17 A. Creditors, debtors, and a lot of 18 governmental agency. 19 Q. But no particular split which one? 20 A. No. 21 Q. Okay. Do you have any education or 22 certification in the construction industry? 23 A. No certifications, although I was in the 24 construction business for a number of years during my 25 college years.</p>
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<p>1 significantly. And I would -- I'm the only one that 2 will testify in my firm. And of the 11 MAIs that I 3 have personally trained, I've never let anybody step 4 inside of a courtroom because you have to kind of be 5 ahead of the attorneys and so forth and be prepared for 6 whatever comes along. 7 But I would have to say now that, you know, 8 I've got, in the last six months probably half a dozen 9 or more in litigation that I'm going to trial on. 10 Q. Now you talked a little bit before during 11 the direct examination about your current licenses and 12 designations and certifications. Have you ever lost 13 one? 14 A. Never. 15 Q. Okay. Is there something that you're not 16 licensed or certified to appraise? 17 A. No, not to my knowledge. I'm a state 18 certified general. 19 Q. Okay. You'll have to forgive me. I'm not 20 obviously as familiar with the credentialing. Have you 21 ever applied for some sort of license or credentialing 22 recognition that you have not yet achieved? Is there 23 something outstanding? 24 A. No, ma'am. 25 Q. Okay. Of the appraisals that you've done,</p>	<p>1 Q. In what capacity? 2 A. Oh, I was a brick mason and a, you know, 3 poured concrete on high rise buildings and so forth. 4 Q. But you wouldn't hold yourself out -- 5 A. No. 6 Q. -- as an expert in construction industry? 7 A. Correct. 8 Q. Okay. 9 A. Although part of my master's degree was in 10 materials and identification and building materials. 11 Q. Okay. But you still wouldn't hold yourself 12 out -- 13 A. No. 14 Q. -- as an expert? 15 A. No. 16 Q. And do you have any education, certification 17 or training as an economist? 18 A. No. 19 Q. So you also wouldn't hold yourself out as an 20 expert in that area, correct? 21 A. Correct. 22 Q. Okay. And I know we talked about 23 Mr. Gillott being a miner. Do you have any mining 24 experience? 25 A. No.</p>

24 (Pages 90 to 93)

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<p>1 Q. Would you hold yourself out as a miner?</p> <p>2 A. No.</p> <p>3 Q. Okay. And can you just lay out again for</p> <p>4 the record the subjects of your expert testimony in</p> <p>5 this case?</p> <p>6 A. Was to --</p> <p>7 MR. WILLIGER: Objection. Go ahead.</p> <p>8 THE WITNESS: Was to review the</p> <p>9 appropriateness of this particular appraisal, and</p> <p>10 again, he notes it as being a summary of a</p> <p>11 self-contained appraisal report that's in progress that</p> <p>12 I haven't seen, so apparently, this is just a summary</p> <p>13 of his findings.</p> <p>14 There is no specific identification of all</p> <p>15 the items that he's included in his summary, so</p> <p>16 basically, it's to review the appropriateness of that,</p> <p>17 his conclusions, methodology and so forth.</p> <p>18 BY MS. KELLER:</p> <p>19 Q. Okay. But you wouldn't say that your role</p> <p>20 is to perform your own independent appraisal of the</p> <p>21 property, correct?</p> <p>22 A. No. But in my review of all the market</p> <p>23 sales and the additional information, I did in my own</p> <p>24 opinion conclude to a range of values.</p> <p>25 Q. Okay. But again, you weren't retained to</p>	<p>1 Q. Any different for -- if you have to testify</p> <p>2 or go to court?</p> <p>3 A. No, it's all this because -- the reason for</p> <p>4 the higher rate is that the immediacy of having to do</p> <p>5 all these things and interrupt my vacation with my</p> <p>6 children.</p> <p>7 Q. So normally, you're at 180, but you're at</p> <p>8 250 today?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So you're not expected to testify in</p> <p>11 any other capacity in this case other than what we just</p> <p>12 discussed which is reviewing this appraisal by</p> <p>13 Mr. Gillott?</p> <p>14 MR. WILLIGER: Objection. Other than what</p> <p>15 he testified already.</p> <p>16 BY MS. KELLER:</p> <p>17 Q. Okay. So you're not going to be a fact</p> <p>18 witness. I mean, you're retained to be an expert</p> <p>19 witness in this case?</p> <p>20 A. Yes.</p> <p>21 MR. WILLIGER: Well, to the extent that he</p> <p>22 -- I'm going to have to object. To the extent that he</p> <p>23 actually testified about facts, then that would be</p> <p>24 included.</p> <p>25 MS. KELLER: That's noted.</p>
Page 95	Page 97
<p>1 independently appraise this property for a value?</p> <p>2 A. That's correct, and that was not my initial</p> <p>3 engagement, correct.</p> <p>4 Q. Thank you. Is there any document that</p> <p>5 spells out the scope of your expected expert testimony</p> <p>6 in this case?</p> <p>7 A. No. There's just an engagement letter.</p> <p>8 Q. Okay. And where is that letter?</p> <p>9 A. I don't know.</p> <p>10 Q. Is it in your file?</p> <p>11 A. I don't know if I brought that or not. It</p> <p>12 was as of March 6th. It just outlined the hourly rate</p> <p>13 and those kinds of things and who was responsible and</p> <p>14 provide your bills and that kind of thing. There was</p> <p>15 no direction one way or the other of what was to be</p> <p>16 performed.</p> <p>17 Q. So it was pretty much, we would like you to</p> <p>18 just review --</p> <p>19 A. Yes.</p> <p>20 Q. -- and evaluate this appraisal?</p> <p>21 A. Yes.</p> <p>22 Q. And what is your hourly rate if you don't</p> <p>23 mind me asking?</p> <p>24 A. Two hundred fifty dollars an hour. Until</p> <p>25 the 18th, and then it reverts to \$180 an hour.</p>	<p>1 BY MS. KELLER:</p> <p>2 Q. What did you do to prepare for your</p> <p>3 testimony today?</p> <p>4 A. Well, I -- I read my appraisal review. I</p> <p>5 looked at Mr. Gillott's report again last night. I</p> <p>6 have the engineering report. I've also seen appraisals</p> <p>7 by Mr. Bowen in September of 2009 and as of March 8th,</p> <p>8 2010.</p> <p>9 Q. Now, going back to -- I'm just going to</p> <p>10 sidetrack a little bit here, but Mr. Bowen's September</p> <p>11 2009 appraisal, do you recall the amount that he</p> <p>12 appraised?</p> <p>13 A. Forty million dollars.</p> <p>14 Q. And that was as the property currently</p> <p>15 stands as an orange grove/potato farm?</p> <p>16 A. Potato farm yes. He did mention the</p> <p>17 potential for mining.</p> <p>18 Q. But the 40 million was, as it is, orange</p> <p>19 grove?</p> <p>20 A. Right.</p> <p>21 Q. And Mr. Gillott's appraisal as an orange</p> <p>22 grove was 33.6 million?</p> <p>23 A. That's correct.</p> <p>24 Q. And you also, I believe testified earlier</p> <p>25 today that, as it stands as an orange grove, that that</p>

25 (Pages 94 to 97)

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<p>1 figure of 33.6 million is accurate, correct?</p> <p>2 MR. WILLIGER: Objection. That is a</p> <p>3 mischaracterization of what he said.</p> <p>4 BY MS. KELLER:</p> <p>5 Q. Okay. What did you say?</p> <p>6 A. Mine would be that it is the grove, potato,</p> <p>7 and the potential for future mining operations.</p> <p>8 Q. Okay. So in your opinion --</p> <p>9 A. All encompassing.</p> <p>10 Q. -- that property is worth 33.6 million, no</p> <p>11 matter what you use it for?</p> <p>12 A. Up to 33.</p> <p>13 Q. Up to 33. No matter what you use it for?</p> <p>14 A. Yes. And the subsequent appraisal by</p> <p>15 Mr. Bowen was at 32.5 million for market value, and</p> <p>16 then I think he had -- the bank had asked him for</p> <p>17 90-day liquidation value, which was perhaps 18 million,</p> <p>18 and 180 day disposal I think was 24 million.</p> <p>19 Q. Now, a liquidation appraisal, even under the</p> <p>20 best circumstances, is always going to be substantially</p> <p>21 less than market value, right?</p> <p>22 A. That's an interesting question for the</p> <p>23 simple fact that most -- a lot of the sales today are</p> <p>24 liquidation value, but that is what's happening in the</p> <p>25 market. Those are the sales. So in some instances,</p>	<p>1 A. Yesterday afternoon at about 4:00 o'clock.</p> <p>2 Q. Okay. And that was the first time that</p> <p>3 you've met with any attorneys on this case?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. And what did you guys talk about?</p> <p>6 A. We just went over my review and the Gillott</p> <p>7 report and the mining report.</p> <p>8 Q. Did you talk about your testimony at trial</p> <p>9 or at the hearing?</p> <p>10 A. Not specifically. We just went over issues</p> <p>11 that he was going to talk about.</p> <p>12 Q. Okay. And what were those issues?</p> <p>13 A. All the ones he covered this morning.</p> <p>14 Q. Okay. Were you shown any documents?</p> <p>15 A. Just shown the Bowen report that I had not</p> <p>16 had privy to prior to arriving here in Boone.</p> <p>17 Q. Okay. And then prior to your meeting with</p> <p>18 counsel yesterday, were you shown any documents or</p> <p>19 given any information by any attorneys or by Key, the</p> <p>20 lender?</p> <p>21 A. No, ma'am.</p> <p>22 Q. So nobody said, we want you to review -- I'm</p> <p>23 assuming you got the appraisal, but we want you to</p> <p>24 review this appraisal, and, you know, we're going to</p> <p>25 send you some more documents that might help you?</p>
Page 99	Page 101
<p>1 liquidation value can be the equivalent of market</p> <p>2 value.</p> <p>3 Q. Because we're operating in an unusual</p> <p>4 market?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. But typically speaking, if you have a</p> <p>7 prime piece of property in a good market, the market</p> <p>8 value is going to be higher than what a court would say</p> <p>9 liquidation value is?</p> <p>10 A. Generally.</p> <p>11 Q. You want to price it really low to sell it</p> <p>12 fast, right?</p> <p>13 A. Generally, because you've got all requisite</p> <p>14 of the definition of market value which assumes a</p> <p>15 willing buyer and willing seller, which is not the case</p> <p>16 really in a liquidation value most times.</p> <p>17 Q. Okay. So is it fair to say, as a general</p> <p>18 rule, that the liquidation value is always going to be</p> <p>19 less?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. Going back to today, did you meet with</p> <p>22 anybody in advance of today's deposition?</p> <p>23 A. Just the attorney for -- that's here today.</p> <p>24 Q. Okay. And was that on the telephone or in</p> <p>25 person?</p>	<p>1 A. Just the engineering report.</p> <p>2 Q. Okay. And what -- whose engineering report</p> <p>3 was that? Do you recall?</p> <p>4 A. It was prepared by Creative Environmental</p> <p>5 Solutions, Inc. dated August 17th, 2000 for Schwab</p> <p>6 Ready Mix.</p> <p>7 Q. Okay. And is that your whole file on the</p> <p>8 case that you just pulled out?</p> <p>9 A. Yes, that I've brought, yes.</p> <p>10 Q. Are there any -- now attached to your</p> <p>11 report, which was previously marked as Exhibit 1, there</p> <p>12 are some documents attached to it, some addendums and</p> <p>13 some charts. Is there anything else that you relied on</p> <p>14 in preparing this report that is not attached to this?</p> <p>15 MR. WILLIGER: Objection.</p> <p>16 THE WITNESS: No. Only personal knowledge</p> <p>17 about the confidential PREI sale, which we've</p> <p>18 discussed. The total amount of aggregate I didn't list</p> <p>19 by provider or competitor, which I happen to know what</p> <p>20 they are. But mostly everything is in this review and</p> <p>21 with supporting documentation in the addenda to support</p> <p>22 my opinion.</p> <p>23 BY MS. KELLER:</p> <p>24 Q. Okay. So if I look through your file now,</p> <p>25 I'm not going to find --</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 A. No.</p> <p>2 Q. -- a bunch of other documents? Okay. Did</p> <p>3 you examine anything else, any books or articles or</p> <p>4 treatises?</p> <p>5 A. No, ma'am.</p> <p>6 Q. What is your home address?</p> <p>7 A. Do I have to give that to you?</p> <p>8 Q. I generally do like it. I'm not going --</p> <p>9 don't worry. I promise I won't call you. It's just</p> <p>10 nice if we have to subpoena people to have their</p> <p>11 addresses.</p> <p>12 A. 4413 Swan Circle, Tampa, Florida, 33609.</p> <p>13 Q. And your work address is on your --</p> <p>14 A. Yeah.</p> <p>15 Q. -- report, which is --</p> <p>16 A. It's on the letterhead.</p> <p>17 Q. It's the 1 --</p> <p>18 A. 112, yes, ma'am.</p> <p>19 Q. Have you or your business ever been party to</p> <p>20 a civil lawsuit?</p> <p>21 A. No, ma'am.</p> <p>22 Q. Have you ever had a malpractice claim</p> <p>23 alleged against you or anyone in your firm?</p> <p>24 A. No, ma'am.</p> <p>25 Q. Have you or your business ever been charged</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Never.</p> <p>2 Q. And of those cases that you have been</p> <p>3 engaged as an expert, do you normally testify at trial</p> <p>4 or do those cases resolve?</p> <p>5 A. Relative to -- we do eminent domain work as</p> <p>6 well. I have a, probably a 99 percent settlement rate</p> <p>7 on my eminent domain. And some of the others do</p> <p>8 mediate, but I'd have to say that we only go on 10 --</p> <p>9 we only wind up going to trial on maybe 10 percent of</p> <p>10 those or 15 percent.</p> <p>11 Q. So as a general rule, you appear in court</p> <p>12 and testify as an expert less often than you're engaged</p> <p>13 and render reports?</p> <p>14 A. Absolutely.</p> <p>15 Q. Who hired you for this case?</p> <p>16 A. Thompson Hine.</p> <p>17 Q. Have you ever worked with that firm before?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Have you ever worked for any of the lenders</p> <p>20 before as an appraiser?</p> <p>21 A. I don't know who all the lenders are other</p> <p>22 than Key.</p> <p>23 Q. Have you for Key?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 103</p> <p>1 with a crime?</p> <p>2 A. Never.</p> <p>3 Q. Sorry. Have you or your business or any</p> <p>4 appraiser in your business ever been subject of a</p> <p>5 professional disciplinary complaint?</p> <p>6 A. No, ma'am.</p> <p>7 Q. And roughly how many, in the last let's say</p> <p>8 five years, have you been engaged as an expert in</p> <p>9 litigation, how many times?</p> <p>10 A. Five years did you say?</p> <p>11 Q. Yeah.</p> <p>12 A. Thirty, thirty-five maybe.</p> <p>13 Q. So you might do a handful a year, little</p> <p>14 more than a handful a year?</p> <p>15 MR. WILLIGER: Objection.</p> <p>16 THE WITNESS: Yes. And like I say, that has</p> <p>17 picked up over the last several years.</p> <p>18 BY MS. KELLER:</p> <p>19 Q. Okay.</p> <p>20 A. Well, for the clarification, I provided</p> <p>21 expert witnesses in 13 courts within the State of</p> <p>22 Florida and Federal courts in Philadelphia, St. Louis,</p> <p>23 Dallas, Miami, and Tampa.</p> <p>24 Q. Have you ever been offered by parties as an</p> <p>25 expert but rejected by the court?</p>	<p style="text-align: right;">Page 105</p> <p>1 A. But in answer to your question, which other</p> <p>2 lenders are there?</p> <p>3 Q. I can pull them out. Maybe I will. But you</p> <p>4 don't have, I guess -- the point of my question is you</p> <p>5 don't have a prior --</p> <p>6 A. No.</p> <p>7 Q. -- relationship with either Thompson Hine or</p> <p>8 any of the lenders that you're aware of where you've</p> <p>9 been routinely engaged as an appraiser?</p> <p>10 A. That is correct.</p> <p>11 Q. And again, I apologize that some of this is</p> <p>12 a little bit repetitive. I'm just going to be jumping</p> <p>13 around a little bit. The instructions that you were</p> <p>14 given when you were hired were just appraise -- review</p> <p>15 this report?</p> <p>16 A. Correct.</p> <p>17 Q. And how much time did you have to do that?</p> <p>18 A. Actually, I started on Friday or -- and then</p> <p>19 I worked from 8:00 o'clock to 5:00 o'clock on Saturday</p> <p>20 and approximately the same time all day on Sunday, and</p> <p>21 then on Monday getting the report, and I finally</p> <p>22 finished it at 3:00 o'clock on the day I left which</p> <p>23 would have been last Thursday, so approximately well</p> <p>24 over 40 hours, I guess.</p> <p>25 Q. Okay. Is that typical turnaround time for</p>

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<p style="text-align: right;">Page 106</p> <p>1 you when you're hired to do appraisals?</p> <p>2 A. Appraisals or reviews?</p> <p>3 Q. Reviews, sorry.</p> <p>4 A. Yes. Generally, in my assignments with, as</p> <p>5 a reviewer, we generally have up to 10 days to get a</p> <p>6 review done.</p> <p>7 Q. So is 40 hours about the amount of time it</p> <p>8 takes to do a review, but maybe you just have more time</p> <p>9 in other --</p> <p>10 A. A lot of my reviews involve multiple</p> <p>11 appraisers. For example, the State of Florida, that</p> <p>12 the 2 appraisals have to be within 20 percent of each</p> <p>13 other. And then if they're not, I have to go back to</p> <p>14 appraisers and say, well, did you consider this? Dah,</p> <p>15 dah, dah, dah, dah. And then they make the</p> <p>16 corrections. They send them to me. And then I</p> <p>17 reconcile.</p> <p>18 Meanwhile, I've submitted a draft to the</p> <p>19 water management district or the state for their review</p> <p>20 and with the corrections. So, you know, the whole</p> <p>21 process could take up to like 21 days depending on the</p> <p>22 response time of the appraisers and so forth.</p> <p>23 Q. Okay. So it kind of varies by the facts and</p> <p>24 what you're hired to appraise?</p> <p>25 A. Yes, ma'am. In this particular case, I</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Generally, is an appraisal going to be more</p> <p>2 work than a review?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What is the process that goes into --</p> <p>5 and I apologize. Some of these questions are very</p> <p>6 elementary, but it will help me. What is the process</p> <p>7 that goes into an appraisal versus a review?</p> <p>8 A. You would have to inspect the subject</p> <p>9 property. In this particular case, since there's a</p> <p>10 citrus grove operation, I would want to know the type</p> <p>11 of fruit that's there. I would want to know what kind</p> <p>12 of root stock that it's on. I would want to know the</p> <p>13 irrigation type of system. I would want to know the</p> <p>14 production rate relative to the boxes of Valencias and</p> <p>15 Hamlins in here, the price per pound solid for this</p> <p>16 material, you know.</p> <p>17 Q. Okay. So there's a lot more that would go</p> <p>18 into an appraisal, whereas the review --</p> <p>19 A. Yes.</p> <p>20 Q. -- the work's kind of been done, so you can</p> <p>21 sit back and flip through and say, okay, I might've</p> <p>22 looked at this or I might have looked at that?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Okay. So I know you had a short turnaround</p> <p>25 on this case, but when did you form your opinion that</p>
<p style="text-align: right;">Page 107</p> <p>1 happened to be working on a mine across the street and</p> <p>2 happened to be working on 12 parcels, so I was already</p> <p>3 down in the area of the subject property. That's why I</p> <p>4 could go by and look at it at such a quick turnaround</p> <p>5 time because it is a 2-and-a-half-hour drive from</p> <p>6 Tampa.</p> <p>7 Q. Okay. Now, you mentioned before that you</p> <p>8 were hired to do a review. What is the difference</p> <p>9 between a review and an appraisal?</p> <p>10 A. Basically, a review is related to standard</p> <p>11 Rule 3 of the Uniform Standards of Professional</p> <p>12 Appraisal Practice. I didn't bring my USPAP with me</p> <p>13 But basically, those items would be found in my scope</p> <p>14 and limiting conditions found on page 2.</p> <p>15 Q. Okay. Is it fair to say that a review is a</p> <p>16 less onerous exploration into the subject matter than</p> <p>17 an appraisal would be?</p> <p>18 A. Could be. Dependent upon the appraisal that</p> <p>19 I'm reviewing, how factual the data is, plus having the</p> <p>20 benefit of the Bowen report on the subject property,</p> <p>21 plus my own knowledge of mining operations, all the</p> <p>22 things that are going on in these properties here, so</p> <p>23 it was not as bad as if I were taking a property in</p> <p>24 Kenansville or some rural area that I had no knowledge</p> <p>25 of, yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 you're rendering today?</p> <p>2 A. As of March 9th.</p> <p>3 Q. Okay. How many drafts of the report did you</p> <p>4 make?</p> <p>5 A. I just sent one draft.</p> <p>6 Q. Okay. So this wasn't one of the situations</p> <p>7 where you're talking about before where you --</p> <p>8 A. No.</p> <p>9 MR. WILLIGER: Just to clarify, you didn't</p> <p>10 send a draft. You sent a final?</p> <p>11 THE WITNESS: Well, actually, I sent the --</p> <p>12 yes, this confidential -- the one that you -- we have</p> <p>13 as an exhibit. That's the only one that's been sent.</p> <p>14 BY MS. KELLER:</p> <p>15 Q. So there wasn't any back and forth?</p> <p>16 MR. WILLIGER: Nobody made any changes to</p> <p>17 your report?</p> <p>18 THE WITNESS: Nobody, no. There were no</p> <p>19 changes.</p> <p>20 MS. KELLER: I'll ask the questions.</p> <p>21 Thanks.</p> <p>22 MR. WILLIGER: Well, I just wanted to make</p> <p>23 it clear.</p> <p>24 BY MS. KELLER:</p> <p>25 Q. Okay. I'll get there. So before you formed</p>

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<p style="text-align: right;">Page 110</p> <p>1 your opinion, did you talk to anybody from Thompson</p> <p>2 Hine or from Key or any of the lenders before you</p> <p>3 formed your opinion on March 9th?</p> <p>4 A. Yes, I believe that Curtis Tuggle?</p> <p>5 Q. And what did you two talk about?</p> <p>6 A. They were -- their issue was could I get it</p> <p>7 done in time? And, you know, I told them that I could</p> <p>8 not appear for the trial because I had -- would be on</p> <p>9 vacation here in Boone, North Carolina with my children</p> <p>10 from Virginia Tech and University of Alabama that I</p> <p>11 hadn't seen since Christmas, and therefore, that's why</p> <p>12 we have the deposition here today. But the -- there</p> <p>13 was no real discussion of values or anything like that.</p> <p>14 Q. Okay. So you weren't told, you know, we</p> <p>15 have this appraisal. It's 210 million, and we don't</p> <p>16 think it's that, and we want you to look at it and find</p> <p>17 fault with it?</p> <p>18 A. No. They said that we would send you an</p> <p>19 appraisal, and they actually sent me both appraisal,</p> <p>20 the Bowen report and Mr. Gillott's report.</p> <p>21 Q. You got them at the same time?</p> <p>22 A. I believe so, yes. And then subsequent to</p> <p>23 that, there was one other thing in my file. I have a</p> <p>24 copy of the deposition of Mr. Gillott.</p> <p>25 Q. Okay. Do you know if that was a deposition</p>	<p style="text-align: right;">Page 112</p> <p>1 o'clock, I guess.</p> <p>2 Q. And how long did you stay?</p> <p>3 A. Oh, just --</p> <p>4 Q. A few minutes?</p> <p>5 A. Well, as I drove -- maybe 15 minutes or so</p> <p>6 driving up and down the roads.</p> <p>7 Q. Now if you would have done a -- and you can</p> <p>8 just answer yes or no because I have a feeling there</p> <p>9 might be a lot of explanation here, but if you were to</p> <p>10 do an appraisal of the property, the actual appraisal,</p> <p>11 would you normally spend more time on a property?</p> <p>12 A. Absolutely, I would, yes, but again, I had</p> <p>13 the benefit of two appraisals.</p> <p>14 Q. Okay. So you just maybe wanted to get a</p> <p>15 view in your mind of, okay, this is what it looks like.</p> <p>16 Okay. I've seen this before?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Did you talk to anybody while you were there</p> <p>19 or was this just in your car by yourself?</p> <p>20 A. I was by myself.</p> <p>21 Q. You testified a few minutes ago to what you</p> <p>22 reviewed when you -- the documents that you were</p> <p>23 reviewing when you came to your conclusion. Can you</p> <p>24 think of anything else that you've reviewed that is</p> <p>25 either not attached to this or that you just told me</p>
<p style="text-align: right;">Page 111</p> <p>1 of Mr. Gillott or a hearing?</p> <p>2 A. What was it?</p> <p>3 MR. WILLIGER: I can tell you what it is.</p> <p>4 It's the hearing testimony.</p> <p>5 MS. KELLER: Okay. That's what I thought.</p> <p>6 Okay.</p> <p>7 BY MS. KELLER:</p> <p>8 Q. Okay. Now you stated earlier that you</p> <p>9 visited the property one time, correct?</p> <p>10 A. Yes, ma'am, but I have seen it driving by</p> <p>11 there on the road, yes.</p> <p>12 Q. But you've never had occasion to actually</p> <p>13 like really enter and explore the property? You just</p> <p>14 saw it from two entry points?</p> <p>15 A. From two roads, yes. I took photographs</p> <p>16 which I forgot to put in here, but anyway.</p> <p>17 Q. Okay. But I'm assuming they look just like</p> <p>18 orange groves?</p> <p>19 A. Yes. And I've looked at -- as can you see</p> <p>20 on the cover page, I made a cover, so you can see that</p> <p>21 it's a grove and how the roads are there, and there's a</p> <p>22 little outparcel missing in the middle and so forth.</p> <p>23 Q. Okay. What time of day was that that you</p> <p>24 were there?</p> <p>25 A. Would have been early morning around 10:00</p>	<p style="text-align: right;">Page 113</p> <p>1 about?</p> <p>2 A. No, ma'am.</p> <p>3 Q. And after forming your opinion, you received</p> <p>4 that one report that you mentioned? I don't remember</p> <p>5 the name of it, but you said there was something that</p> <p>6 you were given yesterday?</p> <p>7 A. I was shown the Bowen report of March 9th or</p> <p>8 8th?</p> <p>9 MR. WILLIGER: I mean I can tell you what it</p> <p>10 was. It was the most recent Bowen report.</p> <p>11 BY MS. KELLER:</p> <p>12 Q. Okay. So in coming to your opinion, you had</p> <p>13 the older Bowen report and Mr. Gillott's appraisal?</p> <p>14 A. Yes.</p> <p>15 MS. KELLER: Okay. I'll just make a note on</p> <p>16 the record that there appears to be a few documents</p> <p>17 that we weren't provided with in connection with this</p> <p>18 report that in Mr. Catlett's file.</p> <p>19 MR. WILLIGER: I think you have everything</p> <p>20 that he mentioned. I mean, you have the Bowen report.</p> <p>21 You have the testimony.</p> <p>22 MS. KELLER: I thought he said there was a</p> <p>23 few miscellaneous things that he had. He explained</p> <p>24 them earlier. I just wanted to note that on the</p> <p>25 record.</p>

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<p style="text-align: right;">Page 114</p> <p>1 MR. WILLIGER: Okay.</p> <p>2 MS. KELLER: I don't know if we'll make a</p> <p>3 document request for them, so I'm not sure.</p> <p>4 BY MS. KELLER:</p> <p>5 Q. Did anyone else in your firm help you on</p> <p>6 this project or was it just you?</p> <p>7 A. Just myself, other than my secretary.</p> <p>8 Q. Okay. So there's no one's work to check or</p> <p>9 verify?</p> <p>10 A. No.</p> <p>11 Q. It was all on your own? Okay. Did you</p> <p>12 receive from anybody at Thompson Hine any criticism,</p> <p>13 instruction or direction on your report after?</p> <p>14 A. No, ma'am.</p> <p>15 Q. Has your level of familiarity with the</p> <p>16 property changed since you were first engaged to now in</p> <p>17 that short amount of time?</p> <p>18 A. No, ma'am.</p> <p>19 Q. And if you could sum up, what is your</p> <p>20 opinion as you sit here today on the property?</p> <p>21 A. As to value or to the methodology or to</p> <p>22 what?</p> <p>23 Q. As to what you were -- maybe there's more</p> <p>24 than one. What you were engaged to provide, the</p> <p>25 opinion you were engaged to provide that you're</p>	<p style="text-align: right;">Page 116</p> <p>1 pricing of the ton of material is not correct, the</p> <p>2 non-discounting of future value of the reserves of 202</p> <p>3 million.</p> <p>4 Q. Okay. But that's all --</p> <p>5 A. I'm trying to answer your question. I'm not</p> <p>6 trying --</p> <p>7 Q. No. I understand. I'm not trying to be</p> <p>8 difficult, either. I just want to avoid you from</p> <p>9 having to overexplain. Maybe my questions aren't --</p> <p>10 those are pieces of --</p> <p>11 A. The reason I can't concur.</p> <p>12 Q. Yes. Okay. But your general overall</p> <p>13 opinion is that you don't concur?</p> <p>14 A. Correct.</p> <p>15 Q. Nothing else?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And then there's all the little subparts</p> <p>18 that led you to that opinion?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Is that fair?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. I might have asked this again, and I</p> <p>23 apologize. How many times have you -- I asked this</p> <p>24 probably a lot of times -- have you done appraisal</p> <p>25 review reports?</p>
<p style="text-align: right;">Page 115</p> <p>1 testifying as an expert at, could you summarize that</p> <p>2 for me?</p> <p>3 A. I could not concur with the opinions</p> <p>4 rendered by Mr. Gillott relative to the going concern</p> <p>5 value or the value of the property with his quote</p> <p>6 unquote "entitled reserves." I could conclude to a</p> <p>7 similar value for his valuation only as the citrus</p> <p>8 grove and the potato farm, but in my opinion, that</p> <p>9 would be all inclusive to also include the value of the</p> <p>10 potential for mining.</p> <p>11 Q. So just make sure I got this. You don't</p> <p>12 concur with Mr. Gillott's opinions regarding going</p> <p>13 concern or entitled reserves, but you do agree with his</p> <p>14 valuation which he values as a citrus and potato farm</p> <p>15 as 33.6, but you value as the entire worth of the</p> <p>16 property?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And that's your only I want to say three</p> <p>19 opinions as an expert in this?</p> <p>20 A. Well, I don't think so. I think that what</p> <p>21 we're forgetting here is all the extraordinary</p> <p>22 assumptions and hypothetical conditions as we've gone</p> <p>23 in ad infinitum on, you know, relative 20 to 70 feet,</p> <p>24 630 to 1450 acre, the amount of reserves, the product,</p> <p>25 the production rate that's not correct, that the</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Number of appraisal review?</p> <p>2 Q. Yeah.</p> <p>3 A. I probably do 50 a year.</p> <p>4 Q. Okay. So it's a substantial --</p> <p>5 A. Yes.</p> <p>6 Q. -- part of your business? And then the</p> <p>7 other 50 is appraisals?</p> <p>8 A. And most of that's related because of my</p> <p>9 experience relative to my associates who have less</p> <p>10 experience.</p> <p>11 Q. Okay.</p> <p>12 MR. WILLIGER: Can we go off the record for</p> <p>13 a minute?</p> <p>14 VIDEOGRAPHER: We're going off the record.</p> <p>15 The time on the monitor is 11:16.</p> <p>16 (RECESS TAKEN FROM 11:16 A.M. TO 11:23 A.M.)</p> <p>17 VIDEOGRAPHER: We're on the record. The</p> <p>18 time on the monitor is 11:23.</p> <p>19 BY MS. KELLER:</p> <p>20 Q. You talked a little bit before about</p> <p>21 extraordinary assumptions. That's a term of art,</p> <p>22 correct?</p> <p>23 A. That's actually defined in the Uniform</p> <p>24 Standard Professional Appraisal Practice.</p> <p>25 Q. So the word "extraordinary" is used in that</p>

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<p style="text-align: right;">Page 118</p> <p>1 concept is not just thrown on there. It's not just to 2 hype up the word "assumption." I mean, it's an actual 3 term -- 4 A. Yes. 5 Q. -- used by appraisers? 6 A. Which I've defined earlier in the 7 deposition. 8 Q. Now, an extraordinary assumption merely 9 assumes a condition or fact that's unknown or uncertain 10 at the time of the appraisal? 11 A. Yes, ma'am. 12 Q. Is it fair to say that most appraisals or a 13 lot of appraisals have extraordinary assumptions? 14 A. No, ma'am. 15 Q. Okay. So it's not common or routine -- 16 A. In most appraisals, there are exceptions. 17 For example -- and then if you're going to get into the 18 hypothetical conditions. For example, we just did a 19 huge ranch that is owned by a big rancher, but also the 20 nature conservancy owned a lot of land. But they want 21 to put one huge conservation easement over the whole 22 property, so we had to write to the Florida Department 23 of Environmental Protection Bureau of Appraisal to give 24 us the hypothetical condition under to which we -- but 25 they had preapproved that, so that the -- when they get</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. WILLIGER: Excuse me. Go ahead. You 2 can answer. 3 THE WITNESS: It's not wrong to use an 4 extraordinary assumption, but the appraiser should have 5 some knowledge of whether that can ever come to 6 fruition. 7 BY MS. KELLER: 8 Q. Okay. But I believe you testified earlier 9 that it would be -- that you might not do it, but it 10 would not be out of the ordinary for a client to just 11 present an appraiser with a set of facts and say, here, 12 just give me the appraisal based on these. Don't worry 13 about anything else? 14 MR. WILLIGER: Objection. 15 THE WITNESS: The client could ask for that, 16 yes. 17 BY MS. KELLER: 18 Q. Okay. Now, the term "extraordinary 19 assumption," even if you're -- this is not a term that 20 once you hear it, you're running to the book to look up 21 what it means? 22 A. Not from an appraiser but from a reader that 23 is not familiar with the appraisal process, possibly, 24 yes. 25 Q. Okay. So you can see then how the use of</p>
<p style="text-align: right;">Page 119</p> <p>1 to the state legislature, everything works out. But 2 there was a hypothetical condition. But generally, 3 those must be approved by whomever before you can just 4 automatically assume them. 5 Q. Is it a rule that they have to be approved, 6 yes or no? 7 A. Not a rule. But it would be a good practice 8 from an appraisal perspective to have it done, yes. 9 Q. But it doesn't automatically invalidate an 10 appraisal because it's not pre -- what's the word I'm 11 looking for. Let me rephrase that. Going on the 12 permit example, because that's the easiest one for me, 13 if the extraordinary assumption is that the permit will 14 be obtained, the fact that it's not does not invalidate 15 the appraisal, correct? The mere fact that it's not 16 been obtained does not invalidate the appraisal, 17 correct? 18 A. That is the extraordinary assumption put on 19 by the appraiser which is contrary to fact. 20 Q. But that's the point of an extraordinary 21 assumption? 22 A. Yes. 23 Q. Okay. So there's nothing wrong with using 24 an extraordinary assumption, correct? Just answer the 25 question.</p>	<p style="text-align: right;">Page 121</p> <p>1 the word "extraordinary" sort of might raise red flags 2 to a layperson that thinks that this must be some, you 3 know, really novel or inflated hypothetical assumption? 4 A. I'll go along with raising the red flag. 5 Q. Okay. But two appraisers, they hear 6 "extraordinary assumption," and they're like, okay, I 7 know that what that means? 8 A. But then you go on alert to figure out what 9 are those extraordinary assumptions. 10 Q. Okay. But again, they're not rare, so to 11 speak, or unknown, unused -- strike that. 12 A. Terminology. 13 Q. Exactly. 14 A. Yes, ma'am. 15 Q. Okay. So that I understand this, if I have 16 a plot of land in Florida, southwest Florida, and I 17 come to you, and I say, here's my plot of land. I want 18 to put a hundred houses on it. Those houses don't 19 exist. 20 Now let's not go into whether they could, 21 should or maybe will. But those houses don't exist 22 right now. Is appraising it as a developed parcel an 23 extraordinary assumption? Would that be an example of 24 one? 25 A. Well, it would have to be, do you have the</p>

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<p style="text-align: right;">Page 122</p> <p>1 plat approved? Do you have plans? Is there demand for 2 a hundred homes? What pricing would the homes be in? 3 So you just can't carte blanche use that extraordinary 4 assumption to stick it into an appraisal that, like I 5 say, there's no probability of. 6 Q. Okay. So I can't have a piece of land 7 that's zoned agricultural and say, it's my plan as the 8 property owner to put houses on this property, and I 9 know it's zoned agriculture now, but I want to put 10 houses on it, and I'm going to do everything that can 11 be done, and I want you to appraise it just so I have 12 an idea of what my property would be worth in this area 13 if I were to develop it. Would that be an 14 extraordinary assumption if I came to you with that 15 fact -- those facts? Sorry. 16 A. It would be extraordinary, but I think 17 related to that is, is the land use agriculture and the 18 zoning agriculture? Then they're probably -- that's 19 the end of that story, unless you can get the land use 20 changed, which, in Florida, is about twice a year, and 21 you have to overcome a lot of things to do that. 22 Q. But is that your issue as an appraiser or is 23 that the property owner's -- 24 A. It's my issue. I'm putting my name on that 25 report. That's an issue for me.</p>	<p style="text-align: right;">Page 124</p> <p>1 been as the appraiser, and the property owner comes to 2 you and says, you know, don't worry about -- I know I 3 don't have the permit, but I have somebody looking into 4 that. And I have somebody looking into the reserves, 5 to use these examples. We just want you to appraise 6 it. We have all the other component pieces figured 7 out, and we're looking into it. But assume that -- 8 assume that we have the reserves and everything because 9 we're going to -- 10 A. If in that example I had talked to the land 11 planner that was in progress, and he says, look, we're 12 about two thirds of the way through. Yeah, we're going 13 to get it -- or, you know, then I would do that, yes. 14 Because I have some level of confidence that would 15 actually get accomplished. 16 Q. So you're comfortable then making an 17 appraisal, even if you don't have -- even if you're not 18 rendering an opinion on the component pieces? Does 19 that make sense? 20 MR. WILLIGER: Objection. 21 THE WITNESS: Repeat the question. 22 BY MS. KELLER: 23 Q. Okay. Probably wasn't well phrased. Sorry. 24 An appraiser can render an appraisal without being the 25 one to determine the depths, for example, of a reserve?</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Okay. So you've never been called upon to 2 just give more or less a hypothetical value to a piece 3 of property? 4 A. No. I think that we've been asked to 5 forecast a value, maybe even some future value relative 6 to what the property could sustain, but in many times, 7 I've already read a feasibility study that would 8 support that opinion, then I would do that. 9 Q. Okay. Going back to this case, is the fact 10 that there's not a permit an extraordinary assumption? 11 A. Yes. 12 Q. Which, as you just testified, the use of an 13 extraordinary assumption is not some really rare 14 occurrence in the appraisal industry, correct? 15 MR. WILLIGER: Objection. Go ahead. 16 THE WITNESS: Except in this case, you've 17 got where it's difficult at best to ever try and get a 18 mining permit in Lee County and that you have the other 19 factors, like I mentioned earlier, the competition, the 20 existing supply, the reduced demand, all those things 21 that would say, why would you even want to get a permit 22 on this particular property? 23 BY MS. KELLER: 24 Q. Have you ever been in a situation where 25 you've appraised a property and your role has solely</p>	<p style="text-align: right;">Page 125</p> <p>1 A. In this case, Mr. Gillott did that, but, you 2 know, what he should have considered is, for example, 3 what are the mining depths of other permitted mines in 4 this area? I mean, I have seen the engineering study, 5 I know where what we call the first confining layer 6 that cannot be penetrated and adversely affect the 7 aquifer, and that ranges at around 90 to a hundred 8 feet, more or less. So, you know, you could say that, 9 you know, 70 feet is probably not too deep. 10 But then we get into the other issues that 11 he said that I agree with. It's more costly to dig up 12 that material, to process it. The equipment cost more. 13 The production costs are all increased. All that 14 relates to the feasibility of that. 15 And then, in looking at this particular 16 engineering report, I'm saying, well, the quality of 17 material for DOT road base, for example, is good to 18 about 30 feet, but I believe it was 30 to 40; that it's 19 not good. And then after 50 to 60 feet, it's really 20 not good. And maybe they could use it for something 21 else. But you see, those are all questions that would 22 say, hmm, is my estimate of mining materials correct? 23 Q. Okay. But that's not necessarily the role 24 of the appraiser to render opinions on those issues, is 25 it?</p>

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<p style="text-align: right;">Page 126</p> <p>1 A. Well, if you're to be an expert in the 2 mining issue, you should know those factors: Lime 3 bearing ratio, LA abrasion testimony, specific gravity 4 You should be able to look at the schematics of the 5 material and say, hey, this is so much overburden. 6 We've got clay material here. You know, we've got 7 shell material here that's not -- you should be able to 8 look at those and determine the kind of -- the product 9 that's going to come out of that particular property. 10 Q. Without having a degree in mining or 11 without -- 12 A. Yes. If you've done it enough times, yes. 13 Q. Okay. But you can feasibly have other 14 people that will provide you with those opinions on 15 which you base yours, correct? 16 A. Yes, ma'am. And that -- when I do mining 17 operations, I depend on engineers and -- 18 Q. Okay. 19 A. -- geologists to provide that to me. 20 Q. That's probably a better way to phrase it. 21 So you're not the one out there actually digging and 22 pulling up core samples to determine the -- 23 A. Material. 24 Q. Material. 25 A. Although I have been on the site a number of</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. WILLIGER: He's allowed to answer the 2 question. You asked him a question. Go ahead and 3 finish. 4 MS. KELLER: I asked him to define 5 hypothetical condition. 6 MR. WILLIGER: If you need to add to your 7 definition of hypothetical condition, you can go ahead 8 and answer the question. 9 THE WITNESS: Not to the definition but to 10 the hypothetical. 11 MS. KELLER: We will get to the subject 12 property. I don't want to get ahead of myself here. I 13 have to control the shots a little bit. 14 MR. WILLIGER: Yes, you do. 15 BY MS. KELLER: 16 Q. So with an extraordinary assumption, the 17 contingency is unknown? 18 A. Yes, ma'am. 19 Q. But with a hypothetical condition, you 20 already know the facts? 21 A. Contrary. 22 Q. Contrary facts. 23 A. Yes. 24 Q. So one is unknown possible. One is we 25 already know it's not under any circumstances?</p>
<p style="text-align: right;">Page 127</p> <p>1 times when core bearing drillings have been done, and 2 when they come out, I look before they put them in the 3 boxes before they send them off to testing because you 4 can kind of just tell the material. 5 Q. Okay. But it's not -- as an appraiser, you 6 don't actually have to be out there doing the -- strike 7 that. You can render your appraisal because a 8 geologist figures out and renders an opinion on what's 9 viable? 10 A. Yes, ma'am. 11 Q. Okay. And probably just learn about it as 12 you go along because you see all the opinions? Is that 13 how it works? 14 A. More or less. 15 Q. Can you explain to me again the hypothetical 16 condition? I think you defined it earlier. It's in 17 your report. I think it's in Mr. Gillott's report, 18 too. 19 A. Yeah. On page 9, it says, "The hypothetical 20 condition is contrary to what exists but is supposed 21 for their analysis." But in particular, on the subject 22 property -- 23 Q. We don't need -- we don't need to go into 24 that yet. 25 A. Okay.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Yes, ma'am. 2 Q. Are hypothetical conditions also routinely 3 used in appraisals? 4 A. Not very often but can be. 5 Q. Okay. So it's sort of like an extraordinary 6 assumption in terms of if an appraiser has a 7 hypothetical condition -- or when you read the word 8 "hypothetical condition," you're not running to your 9 book to look up what it means? 10 A. No. 11 Q. So it's common enough that people in the 12 industry know what a hypothetical condition is, just 13 like they know what an extraordinary assumption is? 14 A. Appraisers and the appraisers' peers, yes. 15 Q. Okay. 16 A. And users of similar reports. 17 Q. Okay. But like the extraordinary 18 assumptions, would you say that hearing the word 19 "hypothetical condition" might raise red flags to a 20 layperson who's reading an appraisal? 21 A. Absolutely. 22 Q. Okay. Now I believe you testified earlier 23 that you have had occasion to make extraordinary 24 assumptions. Have you also had occasion to render 25 appraisals with hypothetical conditions?</p>

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<p>1 A. Just on the one I mentioned earlier with the 2 DEP where they approved the hypothetical condition. 3 Q. Okay. So you've only done one? 4 A. No, there's probably been others over the 5 years. That's the one that's freshest in my memory. 6 Q. Okay. But maybe to contrast this with, you 7 know, appraising somebody's house for sale, I'm 8 thinking that extraordinary assumptions and 9 hypotheticals probably don't come up in the normal, 10 routine homeowner appraisal of a property but maybe 11 more so in the business context or the commercial 12 context? 13 A. As relates the -- it's kind of like a 14 hypothetical condition. You're saying that there's no 15 termite infestation, and then you later find out that 16 there's a termite infestation that costs something to 17 cure, to fix the property, then that hypothetical 18 condition that you said that, relative to being no 19 termites, then that's an issue and affects value. 20 Q. Okay. But wouldn't that be an extraordinary 21 assumption, though, because if you're posed with 22 there's no termites -- 23 A. Well, it's a fine line between extraordinary 24 and hypothetical condition because then you found out 25 it is totally contrary to what you did.</p>	<p>1 A. I know that in one particular example, and 2 this is the PREI mine across the road, that -- and I 3 don't recall the exact amount, but I do believe that he 4 valued it as a going concern between 108 and 120 5 million. I don't recall the exact number. This was a 6 number of years ago. That actually sold for \$55 7 million, so -- 8 Q. Okay. In your -- how many years have you 9 been appraising? 10 A. Thirty-four. 11 Q. Okay. In your 34 years, have there ever 12 been situations where you have been on one side, and 13 another appraiser has come up with an estimate that's 14 been different from yours, substantially different? 15 A. Yes. 16 Q. Okay. So it's not unusual that two people 17 will appraise property different because it may be some 18 different subjective components go into it or they look 19 at different things? 20 A. Well, like I say, when -- the DEP guidelines 21 and the water management district guidelines, the 22 appraisers need to be -- an acceptable range to them is 23 20 percent. I know some banks that say, you've got to 24 be 5 to 10 percent. And it's common for appraisers to 25 be 5 or 10 percent just the way they analyze the data</p>
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<p>1 Q. Then it would be a hypothetical? 2 A. Yes. 3 Q. Okay. So there is -- 4 A. Overlapping sort of. 5 Q. Okay. I think we're in agreement on that 6 question. If an appraiser uses an extraordinary 7 assumption or a hypothetical condition, that doesn't 8 mean there's anything wrong with their appraisal by the 9 mere fact that they're using those, correct? 10 A. It goes to the credibleness of the report. 11 Q. Okay. So you can still have -- to ask that 12 another way, you can still have a credible report with 13 a hypothetical condition or an extraordinary 14 assumption? 15 A. If those are reasonable. 16 Q. Okay. Now, I believe you said earlier that 17 you've known Mr. Gillott for around 20 years, and you, 18 in fact, agreed with him in some part on parts of his 19 appraisal, correct? 20 A. Yes, ma'am. 21 Q. Okay. Would it be fair to say that you 22 respect his opinion and expertise as an appraiser? 23 A. I think it would depend on the property 24 type. 25 Q. Okay.</p>	<p>1 and so forth. But to be so significantly different 2 between 33 million 6 and \$210 million, that's a 3 significant difference. 4 Q. So you've never had a situation in the past 5 34 years where you've had a significant difference with 6 somebody else? 7 A. Not to that -- not to that degree, no. 8 Q. Okay. Maybe not dollarwise but what about 9 percentwise? 10 A. I don't think percentwise, either. 11 Q. Okay. But in your experience, you -- have 12 you seen other -- maybe not your appraisals, but have 13 you seen appraisers where they've been different, 14 substantially different, where one appraiser appraises 15 something low, and someone else appraises it real high? 16 MR. WILLIGER: Objection. 17 THE WITNESS: I'm sure there's been 18 occasions over the years. I don't recall off the cuff. 19 BY MS. KELLER: 20 Q. Is it fair to say that appraisers will look 21 at different -- may look at different comps to render 22 an appraisal? I mean, they don't all have to look at 23 these same four properties? 24 A. That's correct. 25 Q. So if there's 40 properties, each appraiser</p>

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<p>1 can then say -- can review them and say, okay, I'm 2 going to use these as my comps because they might have 3 reasons, where another appraiser picks different 4 properties for different reasons? 5 A. But you might have some of those that were 6 in common. We'll just say 10. It might be that you 7 have 3 or 4 that are in common, and you may -- and then 8 one appraiser and the other appraiser may go off to 9 other sales, yes. But you should have some in common. 10 Q. But if you don't, does that automatically 11 mean that something's wrong? 12 A. The question is why. 13 Q. Why. Okay. But you wouldn't expect two 14 appraisers to pick the same four comps? 15 A. It happens. I mean, it does happen. 16 Q. Okay. Okay. But it's not guaranteed? 17 A. Well, it depends. If there's only -- and 18 coming into this market where there's very few sales 19 today. Or in Florida, you know, it's a common question 20 among lenders I'm hearing that we can't find the sales 21 dah, dah, dah. And it could be that you find the same 22 four sales in a report. 23 Q. Okay. Now you said earlier that you think 24 that Mr. Gillott made too many extraordinary 25 assumptions and hypothetical conditions to render his</p>	<p>1 agreement, I think, that we just do them by name and 2 then number, so -- 3 MS. KELLER: Oh, okay. That's fine. 4 MR. WILLIGER: It would be Catlett 2. 5 MS. KELLER: Okay. That's fine. Catlett 2 6 will be Mr. Gillott's February 26th report. 7 (CATLETT NUMBER 2 WAS MARKED FOR IDENTIFICATION) 8 BY MS. KELLER: 9 Q. Now I believe it's pages -- 10 A. Which one are you referring? 11 Q. I'm looking at Mr. Gillott's report. On 12 pages. It's 5 or 6. Give me one second. Okay. I'm 13 sorry. It's page 18 of Mr. Gillott's report. 14 A. Okay. 15 Q. In his report, is it correct that he does 16 identify those things upon which he is making an 17 extraordinary assumption and those upon which he is 18 making a hypothetical assumption? 19 A. Yes, as to the extra depth, the extra 20 mining, the permits, all those things he has 21 identified. What he seems to not have incorporated in 22 this report is the competitor supply and demand for 23 product. 24 Q. Okay. 25 A. Which should be done in every appraisal</p>
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<p>1 report credible; is that correct? 2 A. Yes, ma'am. 3 Q. Okay. Is there a magic number? 4 A. No, there is no magic number. 5 Q. So it's not like once you hit three, it's 6 not credible? 7 A. No, no. It just, again, the more dependent 8 variables or assumptions that you make, that questions 9 the validity of the report. If you make one, it's 10 probably more possible. But if you make five, then 11 that degree is increased. 12 Q. Could it run the contrary? Could you have 13 five extraordinary assumptions and hypotheticals and a 14 really credible report because of what they are versus 15 another report where there might only be one, but -- 16 A. Could be. Could be. 17 Q. I just want to make sure there's no he's at 18 three, he's out rule? 19 A. No. 20 Q. Okay. Now, we looked at your report which 21 was Exhibit 1, and you were provided with Mr. Gillott's 22 report, which I do want to identify as I'll do it as 23 Exhibit A just so it's in the record because I'm going 24 to talk about each of them for a few minutes. 25 MR. WILLIGER: You know what, there's an</p>	<p>1 report of a mining property. 2 Q. And you would deem those as what? 3 A. Factual data upon which you could render 4 your own opinion of value. 5 Q. Okay. So you're testifying that you think 6 he omitted some factual data, but that he did identify 7 the hypothetical assumptions and extraordinary 8 assumptions? 9 A. Conditions. 10 Q. Conditions. I'm sorry. Okay. 11 MR. WILLIGER: I'm sorry. What did you just 12 say? Maybe you could read it back. 13 MS. KELLER: I can also ask it a little bit 14 better. 15 MR. WILLIGER: Okay. 16 BY MS. KELLER: 17 Q. Mr. -- in your opinion, Mr. Gillott 18 identified the extraordinary assumptions and 19 hypotheticals? 20 A. Yes. 21 Q. He omitted, in your opinion, certain factual 22 data? 23 A. Yes. 24 Q. Okay. So it's not like he was playing hide 25 the ball with these? He laid out the things in the</p>

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<p style="text-align: right;">Page 138</p> <p>1 report that he was making?</p> <p>2 A. No, he brought those to the reader's</p> <p>3 attention.</p> <p>4 Q. Okay.</p> <p>5 A. Which is fine. But again, you know,</p> <p>6 throughout his report, he says that these things are</p> <p>7 more or less correct, you know, relative to production</p> <p>8 rates and pricing and all those kinds of things. And</p> <p>9 if you actually looked at the pricing of the product,</p> <p>10 you couldn't -- you couldn't reach the same conclusion.</p> <p>11 Q. Okay. Is "more or less correct" a term</p> <p>12 that's used in appraisals?</p> <p>13 A. Not very often.</p> <p>14 Q. Okay. Did you have to look it up?</p> <p>15 A. No, but I think that what would happen is if</p> <p>16 I were going to use something like that, I would</p> <p>17 provide a range of values. Say, hey, you know, it's</p> <p>18 between X and Y as opposed to saying more or less.</p> <p>19 Q. Okay. But what we discussed earlier or what</p> <p>20 you testified earlier, that it's your belief that this</p> <p>21 is a summary report perhaps conditioned on a full</p> <p>22 report?</p> <p>23 A. Yes, that's what he says, yes.</p> <p>24 Q. Okay. I want to go through your report, and</p> <p>25 you can stop me whenever the tape needs to be changed.</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Moving down --</p> <p>2 A. But when I wrote this, I didn't have benefit</p> <p>3 of that until I saw the Bowen report, so --</p> <p>4 Q. Okay.</p> <p>5 A. And then the question is whether lime rock</p> <p>6 is a mineral or not, and so it's sort of a cloudy</p> <p>7 little area, but I don't have any information because</p> <p>8 in these two counties, as you well know, the Colliers</p> <p>9 have retained all the oil, gas, and mineral rights.</p> <p>10 It's a nuisance value, if you will.</p> <p>11 Q. Okay. Now you say under Hypothetical</p> <p>12 Conditions that the subject is valued as a going</p> <p>13 concern and as an operating mine and that that's not</p> <p>14 the case on the date of the appraisal.</p> <p>15 MR. WILLIGER: Page?</p> <p>16 BY MS. KELLER:</p> <p>17 Q. Page 5.</p> <p>18 A. That is correct.</p> <p>19 Q. But those were identified as hypothetical</p> <p>20 conditions or extraordinary assumptions?</p> <p>21 A. Yes.</p> <p>22 Q. So we know they're not true?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Now you say that the appraisers</p> <p>25 assume that reserves are entitled and that permits be</p>
<p style="text-align: right;">Page 139</p> <p>1 That's fine.</p> <p>2 MR. WILLIGER: Am I making too much noise on</p> <p>3 this?</p> <p>4 VIDEOGRAPHER: No. It's picking up both.</p> <p>5 We can go ahead and do a tape change now.</p> <p>6 MS. KELLER: Yeah, go ahead, please.</p> <p>7 VIDEOGRAPHER: This marks the end of tape 2.</p> <p>8 We're going off the record. The time on the monitor is</p> <p>9 11:48.</p> <p>10 (RECESS TAKEN FROM 11:48 A.M. TO 12:00 P.M.)</p> <p>11 VIDEOGRAPHER: Stand by. This marks the</p> <p>12 beginning of tape 3. We're on the record. The time is</p> <p>13 12:00 o'clock.</p> <p>14 BY MS. KELLER:</p> <p>15 Q. In your report, page 5, I'm just going to go</p> <p>16 through this. I'll try to be quick.</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. At the beginning, by oil, gas, and mineral</p> <p>19 rights, you say that reservations are common in this</p> <p>20 area of Lee and Collier Counties?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. As you sit here today, you don't know that</p> <p>23 there are any reservations on that property, correct?</p> <p>24 A. I don't know, but I believe that there is</p> <p>25 some reference to it in the Bowen report.</p>	<p style="text-align: right;">Page 141</p> <p>1 renewed, and then you mention a permit application that</p> <p>2 was denied in 2002?</p> <p>3 A. Uh-huh.</p> <p>4 Q. As you sit here today, you're not professing</p> <p>5 to opine that it's not possible for them to get another</p> <p>6 permit ever just because one was made for 20 feet in</p> <p>7 2002?</p> <p>8 MR. WILLIGER: Let me make an objection just</p> <p>9 to make clear just cause this report might be a little</p> <p>10 difficult to understand. Some of the things that he is</p> <p>11 saying here is from what -- actually what Gillott is</p> <p>12 saying, and that's part of his opinion, so I want to</p> <p>13 make sure that becomes clear.</p> <p>14 BY MS. KELLER:</p> <p>15 Q. You're not saying -- as you sit here today,</p> <p>16 your opinion is not that, as a matter of fact, a permit</p> <p>17 to 70 feet would never be issued, correct?</p> <p>18 A. Be very difficult.</p> <p>19 Q. Okay. But not impossible?</p> <p>20 A. I'm not putting it out of the realm of</p> <p>21 possibility.</p> <p>22 Q. Okay. Thank you. And then you mention, I</p> <p>23 believe it's Mr. Gillott that assumes that the mining</p> <p>24 site will be 630 acres and that you mention that this</p> <p>25 is the location of a potato farm operating under a</p>

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<p style="text-align: right;">Page 142</p> <p>1 lease?</p> <p>2 A. I believe that's correct, yes, ma'am.</p> <p>3 Q. But leases can end, correct?</p> <p>4 A. Yes. I think it's an annual lease.</p> <p>5 Q. Okay. And then you say that the appraisers</p> <p>6 assume mining operations will eventually cover 1450</p> <p>7 acres, but that the permit application -- the prior</p> <p>8 permit application only identified 630 feet?</p> <p>9 A. Acres. Yes, ma'am.</p> <p>10 Q. Acres. But you recognized that that was a</p> <p>11 prior permit application?</p> <p>12 A. Yes.</p> <p>13 Q. Correct?</p> <p>14 A. Yes. But there's no guarantee that they</p> <p>15 will extend it from 1600 to -- excuse me -- from 630 to</p> <p>16 1450 acres.</p> <p>17 Q. Okay. But there's no guarantee that they</p> <p>18 wouldn't, correct?</p> <p>19 A. I'm not going to speculate on that.</p> <p>20 Q. Okay. But you're willing to speculate that</p> <p>21 they won't extend it, but you're not willing to</p> <p>22 speculate that they will?</p> <p>23 A. It's a greater possibility that they would</p> <p>24 not extend it as opposed to extending it.</p> <p>25 Q. Okay. But neither are fact, one way or</p>	<p style="text-align: right;">Page 144</p> <p>1 been issued in that respect, on that topic?</p> <p>2 A. I have numerous articles and I have a prior</p> <p>3 study that was done that are in my office because the</p> <p>4 hundred properties that I was talking about that I've</p> <p>5 done, a lot of those are in the DR/GR which is east of</p> <p>6 the interstate, and more specifically, sort of in the</p> <p>7 Alico Road to the end of the county over there which</p> <p>8 are environmental lands and so forth, yes.</p> <p>9 Q. And in those reports, a lot of things are</p> <p>10 looked at, the panther habitat, draining, erosion,</p> <p>11 mining? I mean, it's kind of comprehensive, correct?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And isn't it fair to say that in those</p> <p>14 reports are -- I'm calling them reports. I think you</p> <p>15 know what I'm talking about there.</p> <p>16 A. Studies usually.</p> <p>17 Q. Studies. That mining is consistently</p> <p>18 recognized as a valuable resource; that the limestone</p> <p>19 in that area, it's well recognized that it's an</p> <p>20 available resource?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Weighted with other concerns, correct?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And isn't it fair to say that the area on</p> <p>25 which or around which this property is located is</p>
<p style="text-align: right;">Page 143</p> <p>1 another? It's uncertain, unknown?</p> <p>2 A. You would have to look at the land</p> <p>3 development code.</p> <p>4 Q. Okay.</p> <p>5 A. Well, here's the other issue, from memory.</p> <p>6 The 630 acres has an IPD zoning which allows mining in</p> <p>7 that area. Of course, you have to get your permits and</p> <p>8 everything else. But in order to extend it to 1450, he</p> <p>9 would have to get that zoning changed to extend to the</p> <p>10 whole 1450 acres, and there's no guarantee that that</p> <p>11 would happen.</p> <p>12 Q. But there's also no guarantee that it</p> <p>13 wouldn't, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Some of this -- just give me -- I'm going to</p> <p>16 be a little slow here because some of this we covered,</p> <p>17 and I don't want to keep asking the same questions.</p> <p>18 MR. WILLIGER: I like that. Pages turning.</p> <p>19 MS. KELLER: I'm trying.</p> <p>20 BY MS. KELLER:</p> <p>21 Q. Okay. You talked a little bit earlier about</p> <p>22 the -- I think it was the Lee County, was the DR?</p> <p>23 A. DR/GR, density reduction/groundwater</p> <p>24 resource.</p> <p>25 Q. Are you familiar with the reports that have</p>	<p style="text-align: right;">Page 145</p> <p>1 sitting on a valuable resource?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And the moratorium that was put on</p> <p>4 mining has expired, correct?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Fairly recently?</p> <p>7 A. '09.</p> <p>8 Q. End of '09?</p> <p>9 A. September, I believe.</p> <p>10 Q. So as you sit here today, you wouldn't say</p> <p>11 that mining that area is impossible, never will happen?</p> <p>12 A. I won't say that it will never happen. It</p> <p>13 may happen some day distant in the future. But again,</p> <p>14 we've got to look at --</p> <p>15 Q. Okay.</p> <p>16 A. -- demand for the product. And it's like if</p> <p>17 you're sitting on a pot of gold and nobody wants it</p> <p>18 right now, you know it's going to be valuable some day,</p> <p>19 but when is that going to occur? It's not today.</p> <p>20 Q. So you won't say that it's not? I mean,</p> <p>21 you'll recognize that this property is on a valuable</p> <p>22 resource?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Just --</p> <p>25 A. A valuable rock. And again, it's predicated</p>

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<p style="text-align: right;">Page 146</p> <p>1 on pricing and all other things.</p> <p>2 Q. Okay. If there was a demand for aggregate,</p> <p>3 limestone, this would be a property on which it could</p> <p>4 be looked into?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Okay. You talked a little bit about the</p> <p>7 market and the demand, and I think you testified that</p> <p>8 you're not a construction expert or an economist. This</p> <p>9 is just your opinion based on the market and what you</p> <p>10 read to stay current in your profession, correct?</p> <p>11 A. As well as talking to haulers of material,</p> <p>12 talking to operators of these mines that are in the</p> <p>13 business today, reading the journals and, you know,</p> <p>14 whatever relative, like the Florida or Metro Study and</p> <p>15 Emerging Trends, and so yes, we -- you have to be kept</p> <p>16 up to date.</p> <p>17 Q. Okay. But again, you're not an expert in</p> <p>18 those areas? You're just familiar?</p> <p>19 A. No, ma'am. But that comes along with the</p> <p>20 experience in the appraisal profession.</p> <p>21 Q. Now I think you testified earlier that</p> <p>22 there's no demand for these products or a low demand?</p> <p>23 A. A reduced demand.</p> <p>24 Q. Reduced demand. Okay. Now isn't it true --</p> <p>25 and you probably know more about this than me -- but</p>	<p style="text-align: right;">Page 148</p> <p>1 won't be the new construction.</p> <p>2 Q. Okay. But that aside, as you sit here</p> <p>3 today, can you say that there's no need? I mean, I</p> <p>4 understand that there might not be a budget. It might</p> <p>5 not be happening now, but can you say there's no need?</p> <p>6 MR. WILLIGER: Objection.</p> <p>7 THE WITNESS: I would have to say that the</p> <p>8 demand is significantly reduced.</p> <p>9 BY MS. KELLER:</p> <p>10 Q. Okay. And as you sit here today, you can't</p> <p>11 predict when that demand will increase or not, correct?</p> <p>12 A. The exact year, no. But if you've got a</p> <p>13 15-year supply of developed lots, there's not going to</p> <p>14 be new construction for subdivisions for -- that</p> <p>15 require the road base, the concrete for the curbs, the,</p> <p>16 you know, the culverts and all that kind of stuff. So</p> <p>17 there's not the demand for those kinds of products.</p> <p>18 And also, when nonresidential construction expected to</p> <p>19 go down another 24 percent from last year and public</p> <p>20 construction also expected to go down, so that the</p> <p>21 demand for the next years and possibly the year after</p> <p>22 is even going to be more reduced than it is right now.</p> <p>23 Q. And those are all based on predictions,</p> <p>24 correct?</p> <p>25 A. Those are based upon -- no. Those -- a lot</p>
<p style="text-align: right;">Page 147</p> <p>1 isn't it true that there are issues in southwest</p> <p>2 Florida now with roadways, not having enough roadways;</p> <p>3 ingress and egress out of certain counties or areas is</p> <p>4 difficult based on the current infrastructure in</p> <p>5 southwest Florida now?</p> <p>6 A. Not on -- I just began to review and did not</p> <p>7 have time to complete that review of the DOT's</p> <p>8 projected work schedule from 2010 to 2014. The list</p> <p>9 was rather comprehensive, but a lot of that didn't deal</p> <p>10 with new road construction but simply resurfacing --</p> <p>11 Q. Okay.</p> <p>12 A. -- of those kinds of things. So I didn't</p> <p>13 have the time to really -- and that would have taken</p> <p>14 several days to go through all of that to look at their</p> <p>15 budgets.</p> <p>16 Q. Which is -- exceeds the scope of this, I'm</p> <p>17 sure.</p> <p>18 A. Here -- but what I have seen is that -- I</p> <p>19 have seen the DOT's construction budget go down every</p> <p>20 year in the last three to four years at least. And</p> <p>21 that, for example, the state does not have \$300 million</p> <p>22 it has had historically for preservation 2003, so there</p> <p>23 won't be the funds there.</p> <p>24 Q. Okay.</p> <p>25 A. The county doesn't have the money, so there</p>	<p style="text-align: right;">Page 149</p> <p>1 of that is based upon fact. Like I say, we -- Metro</p> <p>2 Studies traces the subdivisions and so forth. And the</p> <p>3 counties know what their budgets are going to be. And</p> <p>4 as you well know in Florida, a lot of revenue is</p> <p>5 generated by the stamps on the deed. And with no new</p> <p>6 construction and even the resale of properties at</p> <p>7 reduced prices, those revenues have been significantly</p> <p>8 affected which go to the budgets of the state for road</p> <p>9 work and, you know, public facilities and so forth, so</p> <p>10 all that. That is public information.</p> <p>11 Q. Okay. As you sit here today, on page 11 of</p> <p>12 your report, you talk about the appraisers assume that</p> <p>13 the mining will be on 630 acres eventually covering,</p> <p>14 you know, 1450 acres. And you talk about how the</p> <p>15 appraisers assume a depth of 70 feet and 190 million</p> <p>16 tons of production that's estimated by the appraiser</p> <p>17 not found in the report. Do you know that there was no</p> <p>18 report reviewed by Mr. Gillott when he made this?</p> <p>19 A. He did not specifically reference it, and he</p> <p>20 says that he estimated the reserves in his own</p> <p>21 opinion --</p> <p>22 Q. Okay.</p> <p>23 A. -- by a formula.</p> <p>24 Q. Okay. Now, all things considered, if, if we</p> <p>25 knew as a fact that the permit was granted, there was a</p>

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<p>1 demand, and the mine was mined on 1450 acres to 70 2 feet, would that change your estimation of the value 3 from 33.6 million, if all those things were true? 4 MR. WILLIGER: Objection to his -- his value 5 wasn't 33.6 million, but go ahead. 6 MS. KELLER: I'm sorry. I thought he said 7 it was. 8 MR. WILLIGER: He gave a range. 9 BY MS. KELLER: 10 Q. Would that change your range substantially? 11 A. No, it wouldn't, based upon my experience in 12 doing Bonita Grande and PREI that are right there 13 competing with the subject property, knowing what is 14 available for sale, what the price per ton for 15 royalties is and the significant reduced from, you 16 know, the product pricing is reduced by 50 percent or 17 more. First of all, that would lead you to believe 18 that it's not financially feasible. Is something 19 physically possible? Yes. Is it financially feasible? 20 No. 21 Q. Okay. So if all of the hypothetical 22 conditions and extraordinary assumptions that 23 Mr. Gillott noted in his report were true facts, would 24 that change your range of values? 25 A. Not in this market at this point in time,</p>	<p>1 time. And if a -- if a hauler were to be able to do 2 six turns in a day, maybe he could only do four turns 3 in a day or turnaround times. And then you've got your 4 extra cost per ton mile to deliver that product. So 5 that goes to the pricing of your product at that 6 location which you have to be more competitive. And 7 therefore, you would have to be below, let's say 8 Youngquist, who I have seen cut deals for 10 cents a 9 ton. That's how critical it is. 10 Q. Right now? 11 A. Yes. 12 Q. But these are all just unknown facts, how 13 fast somebody can drive and turn around or, you know, 14 the location and how fast you can haul? I mean, these 15 are all somewhat up in the air facts, aren't they? 16 MR. WILLIGER: Objection. 17 THE WITNESS: No. I can just see -- for 18 example, when I walked into PREI the other day, they 19 had only, let's say two trucks, in the period of about 20 20 minutes. But when I was inspecting a comparable 21 near the Bonita Grande Aggregates, they had six trucks 22 in the same period of time. So they are one mile for 23 the -- from the interstate. Now, you know, their 24 pricing and all is different, but they were more easily 25 available to the interstate to haul to Collier County</p>
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<p>1 no. 2 Q. But with the demand that he stated over the 3 next 10 years? 4 A. But again, his demand is not correct. So 5 that would make his cash flow incorrect. 6 Q. Okay. Speaking of that, let me sidetrack 7 just a tiny bit when we talked about numbers because it 8 just triggered -- you spoke about numbers before, and 9 on your GPS unit, it was a little bit off. Is that -- 10 when you're appraising a piece of property or looking 11 at a piece of property of this size, is it common to be 12 off a little bit? 13 MR. WILLIGER: Objection. Go ahead. 14 THE WITNESS: Not on something that's that 15 factual. That's simply just turning your odometer on 16 and going from the interstate and Alico Road. That 17 just goes to, you know, how conscientious he was about 18 reporting facts. 19 Q. Okay. And so you're certain -- a hundred 20 percent certain that your calculations of mileage and 21 stuff are correct? 22 A. Yes. I put it on my odometer, yes. But 23 again, that's not the point. The point being -- well, 24 one of the points being you're a little further out 25 than your competitors, so you'd have additional hauling</p>	<p>1 or haul all over Lee County, so, you know, distance is 2 a situation that should be considered. 3 BY MS. KELLER: 4 Q. Okay. So you see no distinction between the 5 value of an orange grove as it's operating now and the 6 fact that it's sitting on a valuable resource? 7 A. Not at this point in time, especially given 8 the comparable sales where there are existing grove 9 operations that were purchased for the potential mining 10 operations and generally not above the \$17,000 an acre 11 level. 12 Q. But you do state in your report that you can 13 concur -- on page 15, you can concur that there's 14 suitable mining material if in demand? 15 A. Yes, based upon the engineering study that I 16 read, yes. 17 Q. Okay. And this might be somewhat 18 repetitive, but on page 16 where you talk about 19 extraordinary assumptions, I think you're referring to 20 page 8 of Mr. Gillott's report? You say -- 21 A. I'm sorry? 16? 22 Q. Yeah. 16 on your report. 23 A. Yes, ma'am. 24 Q. Where you say "Extraordinary Assumptions." 25 You say, "Again, the appraiser presumes a fact</p>

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<p>1 otherwise uncertain -- presumes as fact otherwise 2 uncertain information about the subject property." 3 That again is an extraordinary assumption, correct? 4 A. Yes. 5 Q. Okay. Now when you say, going down the next 6 paragraph, you say, "All mines have significantly 7 reduced demand and continue to drop since 2007 and 8 several in the process of reverting to the lenders." 9 These are just facts that you happen to know, some 10 hearsay facts, I guess? 11 A. Well, no. I'm to testify on Bonita Grande 12 in, I think, a month. I don't know the exact date. 13 And the PREI mine -- again confidential information -- 14 the lender is -- these are people that purchased the 15 mine that were not in the mining business, relied on 16 local people. There have been three or four plant 17 managers since then. But they had an offer made on the 18 property to see if that property -- I mean. Excuse 19 me -- that offer is realistic, and that's why I'm in 20 the process of appraising that, therefore, I have to 21 look at the pricing, production, and all those issues. 22 Q. Okay. But is it fair to say that amongst 23 those that you know are in the process of reverting to 24 lenders, that there are facts specific to each business 25 that might differ from one another?</p>	<p>1 valuation? 2 A. Generally. Generally, by the court systems, 3 because it appears to be more speculative than to have 4 a sale of a property that had mining permits or had, 5 you know, those things that are in place today. It's 6 less speculative. 7 For example, it's more prevalent in today's 8 economy if you're doing income producing properties to 9 do a proforma, you know, what revenues would you 10 generate, what vacancy collection loss, expenses, net 11 operating income, then to go and do a discounted cash 12 flow because the discounted cash flow, you have to 13 assume, are the vacancies going to change? Are the 14 rates -- the lease rates going to change? Are, you 15 know, expenses, what is the discount? All those, you 16 know, what's the competition doing? Am I going to have 17 to reduce my rent? 18 So the more dependent variables that you 19 have, the less reliable that opinion of value is. And 20 that's the reason you'd use a proforma, and that's the 21 preference among the tax courts. 22 And I can relate to that, as a specific 23 example, I was asked by the tax court many years ago on 24 the lender estate, I had done a discounted cash flow, 25 and they said, well, we'd like to see the bulk sale of</p>
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<p>1 A. The common thread, if you will, is, for 2 example, I think I cite in here Bonita Grande -- I 3 forgot the exact year -- 2007, had approximately 2.185 4 million tons of product sold. This last year, they 5 were 600,000 tons or less. The PREI near the subject 6 has been unable to do more than about 300. They say 7 maybe 250 this year and next year. 8 And not only that, the pricing of the 9 product has gotten so low, like I say, when it was 10 10 or 11 bucks. It's now 6 or 7 or even below. So it's 11 gone to the financially feasibility. And then if your 12 production costs are at say \$5 and you're only selling 13 the product for 4.50 or \$5, it's not economically 14 feasible to keep that mine in operation. 15 Q. Now this would be -- that in and of itself 16 would be something that would perhaps be an issue for a 17 business valuation expert, though, correct? 18 A. In this case, Mr. Gillott has opined to a 19 value as a going concern, so he has considered those 20 elements in his evaluation of the subject. But if the, 21 in fact, the market data suggests something that's 22 totally different, then his discounted cash flows would 23 be off. You couldn't rely on them. 24 Q. No, I think you mentioned later in your 25 report that the discounted cash flow is not a reliable</p>	<p>1 lots to a single purchaser. Therefore, they relied 2 more on that than a discounted cash flow. It's based 3 upon opinion and experience. 4 Q. But some courts do require a discounted cash 5 flow, correct? 6 A. I don't know that the court requires it. 7 But the appraisers have done it. 8 Q. Okay. So it's not some suspect way of 9 evaluating? It's just different, right? 10 A. Yes, but it requires a lot more 11 considerations than the strict sale itself. 12 Q. Okay. Turning pages for you. Okay. You 13 talk on page 19 that there's no mention of the Jones 14 mining operations. And you mention a few other 15 businesses earlier that weren't mentioned. But just to 16 sum up, we discussed earlier that different appraisers 17 will look at different things, so it's not out of the 18 ordinary that something you might find should go in 19 here another appraiser might not? 20 A. He might not know about the PREI, but this 21 property, the Jones Mine Collier Aggregates, has been 22 available for sale, and if you're doing your market 23 investigation to find out what is under the principle, 24 basic principle of substitution, what could I find? 25 Here's a property that has 2600 acres. We're at 2100.</p>

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<p style="text-align: right;">Page 158</p> <p>1 It has 74 million tons of product, known reserves, 2 permitted, operating today that you can buy for 32 3 million, you know, so therefore, that should have been 4 known. 5 Q. Is there no difference between those two 6 properties fundamentally? 7 A. I would just have to say location because 8 it's on Immokalee Road in Collier County, with just -- 9 but then if you were going to bring product to the East 10 Coast, Hialeah, Homestead, that would be a closer 11 location than the subject property. 12 Q. Okay. On page 22, you talk about, "It's not 13 realistic to assume that the cash flow would be 14 reinvested at a rate of 4 percent." And you testified 15 to that a little bit in your direct examination. 16 You're not holding yourself out as an expert in banking 17 or financing, are you? 18 A. Well, I used to be the senior real estate 19 underwriter for Flagship Banks for many years ago, and 20 some of my best friends are all bankers, so -- and I 21 have to call a lot of times to bankers and say, hey -- 22 like this 4200 unit reclaimed, I called him to see what 23 he would lend, what his lending requirements would be 24 and so forth. So I'm in constant contact with the 25 lenders.</p>	<p style="text-align: right;">Page 160</p> <p>1 (RECESS TAKEN FROM 12:25 P.M. TO 12:32 P.M.) 2 VIDEOGRAPHER: Ready? Stand by. We're on 3 the record. The time on the monitor is 12:32. 4 BY MS. KELLER: 5 Q. Just to clarify, you never saw the original 6 permit that was issued in 2006, correct? 7 A. 2002, yes, ma'am. 8 Q. 2002? 9 A. That is correct. 10 Q. Thank you. Now you said earlier that it 11 would probably take longer to mine that property, but 12 you don't know that for a fact, how long it would take, 13 correct? 14 A. Well, based upon historic production at the 15 competitive mines and in Mr. Gillott's opinion, he's -- 16 that he's only going to do 47 acres in 10 years, if you 17 have 1450 acres divided by 4.7 acres a year, it's a 18 long time. 19 Q. That's how you came to 130? 20 A. Or whatever the number. 21 MR. WILLIGER: 300, I thought. 22 BY MS. KELLER: 23 Q. Was it 300? 24 A. Whatever. 25 Q. But it was more than 10?</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. But you're not an expert in financing, 2 correct? 3 A. No. 4 Q. And you're not a loan expert or a financing 5 expert, correct? 6 A. Well, I'd have to say my four and a half 7 years as a senior real estate underwriter for the bank, 8 that I would say I would know what the underwriting 9 requirements are, yes, ma'am. 10 Q. But you're not holding yourself out as an 11 expert? 12 A. As a banker, no. 13 Q. Or as a loan expert? 14 A. No. But I can tell you that after September 15 of 2008, very difficult to obtain lender financing and 16 capital -- the lack of availability of capital. 17 Q. I'm going to take a few minutes here just 18 because I want to not ask the same questions over if 19 you can give me a few minutes. 20 A. Can I take just a second break? 21 MS. KELLER: Sure. I'm going to try to wrap 22 this up shortly. 23 VIDEOGRAPHER: We're going off the record. 24 The time on the monitor is 12:25. 25</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Yeah. 2 Q. When you talked about different appraisals 3 you've done at Bonita Grande and other places, those 4 were different properties with different businesses, 5 correct? 6 A. Those were actual operating mine businesses, 7 yes. 8 Q. On different properties, close, maybe 9 similar -- 10 A. Close in the same sphere of influence, yes. 11 Q. Okay. Now you said that earlier you 12 testified, and correct me if I'm mischaracterizing 13 this, but you found that 4 bore holes insufficient on 14 300 acres? 15 A. On 2100 acres. 16 Q. 21. Where am I getting 300 from? You 17 thought that maybe more samples should have been taken? 18 A. Yes, ma'am. 19 Q. But again, you testified earlier that you're 20 not a geologist, correct? 21 A. That's correct. 22 Q. And you can't -- as you sit here today, you 23 can't say that it's not sufficient as a matter of fact, 24 can you? 25 A. I would just say that the materials are</p>

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<p>1 not -- and I don't know to give you an example how it 2 is in Ohio, if -- you go along and you see lime rock on 3 the side of the road or granite, they're all in strata. 4 It could be varying. So the material could differ from 5 different points on the property. And they will not 6 necessarily be consistent. That's what I'm trying to 7 point out. 8 Q. But we don't know for a fact that four bore 9 holes is not sufficient? Or that it couldn't be 10 representative, I guess is a better way to put it? 11 A. On other mining operations that I have, 12 they've had more test borings per acres than this. 13 Q. But this could still be sufficient? 14 A. Possibly. 15 Q. Now you're not sitting here saying today 16 that it's impossible to mine 1450 acres, are you? 17 A. With no permits in place, I mean that's -- 18 Q. Permits aside. 19 A. It could be physically possible, but now 20 we're getting back to whether it's financially feasible 21 or not. 22 Q. But it's not impossible to undertake it? 23 A. It's not impossible, but you wouldn't 24 obviously mine 1450 acres at one time. 25 Q. Okay. Assuming that it's, that it could</p>	<p>1 Q. Have you ever appraised something as a going 2 concern that was not at the time? 3 A. No, those have all been going concerns. 4 Q. But as appraisers in general, somebody could 5 appraise something as a going concern for purposes of 6 obtaining a value? 7 A. Yes, ma'am. 8 Q. Is it fair to say that somebody who was 9 planning on mining a piece of property would probably 10 engage various experts, somebody to do the geologist 11 end and somebody to do the financial end and, you know, 12 like a miner, a geologist, an appraiser; that multiple 13 experts would come together to kind of put the pieces 14 in place? 15 A. Yes, ma'am. 16 Q. You talked a little bit earlier about how 17 you had some clients or some properties that you were 18 aware of where they had orange groves that were 19 profitable, but they had underground resources? 20 A. Yes, ma'am. 21 Q. In those situations, at the time that you 22 either looked at them -- at that point in time, it was 23 more profitable perhaps to grow oranges, but it doesn't 24 mean that that's a fact, correct? 25 A. Those are not too distant a sales in terms</p>
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<p>1 functionally be mined? 2 A. Physically, yes. 3 Q. Physically. Under the circumstances that 4 Mr. Gillott assessed the property, the hypotheticals 5 and the extraordinary assumptions, would you say that 6 it would be more valuable as a mine than it would be as 7 an orange grove? 8 A. Not in today's market. 9 Q. In a better market, 10 years ago? 10 A. Yes. 11 Q. And maybe 10 years in the future? 12 A. Depending on the degree. We don't know that 13 the market will return to its previous high. 14 Q. Generally speaking, would a mining facility 15 be more profitable than an orange grove? 16 A. Yes. 17 Q. Okay. Now you talked a little bit before 18 about the concerns about breaching aquifers and all 19 that kind of stuff. You're not an environmentalist, 20 are you? I think I've covered them all. 21 A. No, ma'am. 22 Q. I think that's the last one I was waiting 23 for. Okay. Have you ever come to a conclusion 24 contrary to that of another appraiser, yes or no? 25 A. Yes, ma'am.</p>	<p>1 of date from the subject date of valuation. 2 Q. So depending on various things, it could be 3 more profitable for oranges but also for mining? 4 A. Could be more profitable for oranges at this 5 point in time, yes. 6 Q. Okay. Just -- you testified earlier that it 7 was your opinion that it was not possible to mine to 50 8 feet, correct, or 70 feet, correct? 9 A. It's probably physically possible to do 10 that. You would require additional equipment to do 11 that. And that the mine across the street was only 12 permitted to 50 feet. 13 Q. Okay. That was a different property? 14 A. Yes, but it -- in the same geological 15 formation, if you will, as the subject property. 16 Q. But based on what you said earlier, could be 17 different? 18 A. Could be different. 19 Q. Based on samples. Okay. And again, you're 20 not a geologist? 21 A. Yes, that's correct. 22 Q. I've covered that one. Now when you said 23 you've appraised properties that were profitable, 24 citrus groves with reserves under them, could it be 25 possible that the owners just didn't want to mine the</p>

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<p>1 property or had no interest in doing that?</p> <p>2 A. There is that possibility. But their</p> <p>3 original purpose in buying the property was to</p> <p>4 eventually mine the property, but that the groves would</p> <p>5 provide an interim income for holding that property</p> <p>6 until it became profitable or there was the demand for</p> <p>7 the product.</p> <p>8 MS. KELLER: I think I'm done.</p> <p>9 MR. WILLIGER: I just have a few minutes of</p> <p>10 redirect.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MR. WILLIGER:</p> <p>13 Q. Have you ever come to a conclusion, in</p> <p>14 connection with another appraiser's opinion, of the</p> <p>15 magnitude that you've reached here?</p> <p>16 A. Not to my knowledge, no.</p> <p>17 Q. Okay. During the cross-examination, there</p> <p>18 was a reference to page 16 of your report right under</p> <p>19 extraordinary assumption, and I think you were asked</p> <p>20 about a presumption as fact otherwise uncertain about</p> <p>21 the subject property. And then you write in your</p> <p>22 report, does the appraiser have a reasonable basis? Is</p> <p>23 it your belief that the appraiser had a reasonable</p> <p>24 basis for those extraordinary assumptions?</p> <p>25 A. Not based upon market conditions, not --</p>	<p>1 10th year and discounts them back, but he never</p> <p>2 discounted that future value from 202 million down to</p> <p>3 65 million which he should have done.</p> <p>4 Q. There was a lot of discussion about</p> <p>5 extraordinary assumptions and hypothetical conditions</p> <p>6 during your cross-examination. Are the extraordinary</p> <p>7 assumptions and the hypothetical conditions used by</p> <p>8 Mr. Gillott reasonable?</p> <p>9 A. In my opinion, no.</p> <p>10 Q. If you had spent more time on the subject</p> <p>11 property, would any of your opinions have changed?</p> <p>12 A. No, sir.</p> <p>13 Q. And why is that?</p> <p>14 A. I happened to review the aerial photograph</p> <p>15 of the subject property, the layout of the property,</p> <p>16 and I've read Mr. Bowen's report, which is more</p> <p>17 descriptive than Mr. Gillott's relative to the physical</p> <p>18 characteristics of this property, so that it, it</p> <p>19 wouldn't have changed my opinion.</p> <p>20 Q. There was a little bit of a discussion about</p> <p>21 who hired you and all of that. Did anybody from</p> <p>22 Thompson Hine or from any other source review your</p> <p>23 report before you finalized it?</p> <p>24 A. No, sir.</p> <p>25 Q. Did anybody from Thompson Hine or anybody</p>
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<p>1 there was no consideration that I saw relative to the</p> <p>2 demand for the product and the correct pricing of</p> <p>3 product that could have led you to that conclusion.</p> <p>4 Q. Okay. There was also a discussion about</p> <p>5 comparable sales, I guess, and there was a discussion</p> <p>6 about the possibility of being able to use different</p> <p>7 ones. But an MAI appraiser simply can't ignore</p> <p>8 important or relevant comparables just to come up with</p> <p>9 a preferred value, can he or she?</p> <p>10 A. He should not do that, no.</p> <p>11 Q. If he or she did do that, would that be a</p> <p>12 violation of any of the principles of USPAP, U-S-P-A-P?</p> <p>13 A. Yes, it -- the ones that are misleading,</p> <p>14 that would be under standard rules 1 and 2, I believe.</p> <p>15 Q. Even under the methodology used by</p> <p>16 Mr. Gillott, if Mr. Gillott had used the sales that you</p> <p>17 had found, would it necessarily have affected his</p> <p>18 report?</p> <p>19 A. In my opinion, yes.</p> <p>20 Q. And it would have affected his report by</p> <p>21 significantly reducing the values he found?</p> <p>22 A. Yes. And for example, the -- when he</p> <p>23 estimates the future reserves out in 10 years at 183.6</p> <p>24 million and then puts them in at a dollar 10, the same</p> <p>25 thing he does today, he takes his cash flows from the</p>	<p>1 else ever make any suggestions that you change one</p> <p>2 word, one letter in your report?</p> <p>3 A. No, sir.</p> <p>4 Q. Before you completed your report, did you</p> <p>5 run your opinions or your numbers by anybody at</p> <p>6 Thompson Hine or anybody else?</p> <p>7 A. No, I just pdf'd the file to them, and then</p> <p>8 I left on vacation.</p> <p>9 Q. Okay. There was some discussion that</p> <p>10 perhaps it might not be unusual to appraise a property</p> <p>11 based in a conditional -- based conditionally on some</p> <p>12 kind of permit being obtained. Is it the case, though,</p> <p>13 that it still needs to be a reasonable probability that</p> <p>14 the permit is going to be obtained if you're going to</p> <p>15 use it in your assumptions?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And I think that the question was already</p> <p>18 asked, but let me just make certain. If the subject</p> <p>19 property here had the permits that they -- that</p> <p>20 Mr. Gillott assumed somehow will be obtained at some</p> <p>21 point in the future, would your range of 31 and a half</p> <p>22 million to 33.6 million still be the same?</p> <p>23 A. Yes, it would, based upon the prices paid</p> <p>24 per ton and the prices paid per acre for comparable</p> <p>25 properties having reserves, known reserves and/or</p>

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<p style="text-align: right;">Page 170</p> <p>1 permits in place along with, like I say, other 2 comparables that had reserves that were purchased in 3 the market. 4 MR. WILLIGER: Okay. 5 MS. KELLER: Can I just do a couple 6 follow-up? Real quick. I promise. 7 FURTHER EXAMINATION 8 BY MS. KELLER: 9 Q. As you sit here today, you're not opining 10 that there was any violation by Mr. Gillott of any 11 USPAP procedures, are you? 12 A. I -- without specific reference, I only want 13 to say that all disclosures were not made of all 14 available facts. 15 Q. Okay. But you admit, based on what you've 16 reviewed, that this appears to be a summary report? 17 A. That is correct. 18 Q. And you say that there was no consideration 19 given to demand and pricing and market conditions, but 20 again, in this summary report, would it surprise you if 21 you find that in the bigger report? 22 A. I'd like to see it, yes. 23 MR. WILLIGER: Okay. I'd just like to put 24 on the record that there has been no other additional 25 report from Mr. Gillott that has been prepared or</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. WILLIGER: Not waive, but can't do it 2 before the hearing anyway. If we can agree that it 3 will be sent to him for review, that would be 4 appreciated. 5 (DEPOSITION CONCLUDED AT 12:48 P.M.) 6 (SIGNATURE RESERVED.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 171</p> <p>1 exchanged in this case. 2 BY MS. KELLER: 3 Q. Okay. In talking about discounting property 4 out, isn't it too speculative to discount property out 5 years and years? 6 A. Well, I think you talked about the use of 7 discounted cash flows as being appropriate. 8 Q. Okay, but -- to some cap, though, right? 9 A. No. It's different. Capitalization is when 10 you take one year's net operating income and capitalize 11 it into perpetuity. 12 Q. Okay. 13 A. When you use a discount -- it's like taking 14 a snapshot. When you do a discounted cash flow, that's 15 like taking a video like we are of this deposition that 16 records everything. You're looking out into the 17 future. But if you're going to project something so 18 far out in the future at the same dollar and 10 that 19 you are today, then that value has to be discounted 20 back by present value. 21 MS. KELLER: Okay. I think that's it. 22 MR. WILLIGER: Thank you for your time. 23 VIDEOGRAPHER: This concludes the 24 deposition. The time on the monitor is 12:47. 25 (OFF-THE-RECORD DISCUSSION.)</p>	<p style="text-align: right;">Page 173</p> <p>1 STATE OF NORTH CAROLINA 2 COUNTY OF MECKLENBURG 3 4 I, Karen K. Kidwell, RMR, CRR, in and for 5 the State of North Carolina, do hereby certify that 6 there came before me on Monday, March 15, 2010, the 7 person hereinbefore named, who was by me duly sworn to 8 testify to the truth and nothing but the truth of his 9 knowledge concerning the matters in controversy in this 10 cause; that the witness was thereupon examined under 11 oath, the examination reduced to typewriting under my 12 direction, and the deposition is a true record of the 13 testimony given by the witness. 14 I further certify that I am neither attorney 15 or counsel for, nor related to or employed by, any 16 attorney or counsel employed by the parties hereto or 17 financially interested in the action. 18 This the 15th day of March, 2010. 19 20 21 Karen K. Kidwell, RMR, CRR 22 Notary Public #19971050142 23 24 25</p>

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Page 174	Page 176
1 WITNESS'S CERTIFICATE	1 Page ____ Line ____ should (Page 2 of 2)
2	2 read:
3 I, FRANK A. CATLETT, do hereby certify	3 Page ____ Line ____ should
4 that I have read and understand the foregoing	4 read:
5 transcript and believe it to be a true, accurate, and	5 Page ____ Line ____ should
6 complete transcript of my testimony, subject to	6 read:
7 the attached list of changes, if any.	7 Page ____ Line ____ should
8	8 read:
9 FRANK A. CATLETT	9 Page ____ Line ____ should
10	10 read:
11 This deposition was signed in my presence by	11 Page ____ Line ____ should
12 _____, on the ____ day of	12 read:
13 _____, 2010.	13 Page ____ Line ____ should
14	14 read:
15	15 Page ____ Line ____ should
16 Notary Public	16 read:
17	17 Page ____ Line ____ should
18 My commission expires:	18 read:
19	19 Page ____ Line ____ should
20	20 read:
21	21 Page ____ Line ____ should
22	22 read:
23	23 Page ____ Line ____ should
24	24 read:
25	25

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1 (Page 1 of 2)
2
3 E R R A T A S H E E T
4 Re: Schwab Industries, Inc., et al
5 Deposition of: Frank A. Catlett
6 Please read this transcript with care, and if
7 you find any corrections or changes you wish made, list
8 them by page and line number below. DO NOT WRITE IN
9 THE TRANSCRIPT ITSELF. Return the
10 Certificate and Errata Sheet to this office after
11 it is signed. We would appreciate your prompt
12 attention to this matter.
13 To assist you in making any such corrections,
14 please use the form below. If supplemental or
15 additional pages are necessary, please furnish same and
16 attach them to the errata sheet.
17 Page ____ Line ____ should
18 read:
19 Page ____ Line ____ should
20 read:
21 Page ____ Line ____ should
22 read:
23 Page ____ Line ____ should
24 read:
25 Page ____ Line ____ should
read:

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